FEDERAL TRADE COMMISSION DECISIONS

▽

FINDINGS, ORDERS, AND STIPULATIONS

JUNE 1, 1939, TO NOVEMBER 30, 1939

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF NOVEMBER 30, 1939

ROBERT E. FREER, *Chairman.*

Took oath of office August 26, 1935. Appointment for second term confirmed January 28, 1939.

GARLAND S. FERGUSON.

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, and August 31, 1939.[1]

WILLIAM A. AYRES.

Took oath of office August 23, 1934.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

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[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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[4] For order setting aside prior cease and desist order in this case, see p. 1421.

[5] For prior order in separate proceeding closing said case against respondent G. M. Moses on ground that identical practices were involved as in instant proceeding, see p. 1427.

[6] For prior order in separate proceeding closing said case against respondent Muriel Co., on ground that identical practices were involved as in instant proceeding, see p. 1427.

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[8] For order setting aside prior cease and desist order in this case, see p. 1421.

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[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 publications entitled "Statutes and Decisions—1914–1929," and "Statutes and Decisions—1930–1938," which also include cases here involved, for their respective periods.

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[2] For interlocutory order of lower court, see "Memoranda," 28–1966 = or 1938 S. & D. 487.

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[3] Interlocutory order. See also S. & D. 721.
[4] For interlocutory order, see "Memoranda," 28-1965= or 1938 S. & D. 485.
[5] For interlocutory matter, see "Memoranda," 28-1968 or 1938 S. & D. 489.
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[7] For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

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[8] Interlocutory order. See S. & D. 722.
[9] For interlocutory order, see "Memoranda," 20–743 or S. & D. 716.
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E. J. Brach & Sons (C. C. A.) 29-1577.
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.
El Moro Cigar Co. (C. C. A.) 29-1616.
107 F. (2d) 429.
Englander Spring Bed Co., Inc. (D. C.), "Memoranda," 28-1969.
Evans Fur Co. et al. (C. C. A.) 24-1600.
88 F. (2d) 1008.

[12] For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., S. & D. 190.
[13] For interlocutory order, see "Memoranda," 28-1966 or 1938 S. & D. 485.
[14] 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.
Famous Pure Silk Hosiery Co. (Louis Dubinoff). (C. C. A.) 27–1673.
Fioret Sales Co., Inc. et al. (C. C. A.) 27–1702; 28–1955.
100 F. (2d) 358.
Fluegelman & Co., Inc., N. (C. C. A.) 13–602.
37 F. (2d) 59.
Flynn & Emrich Co.[15] (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, 6–559.
274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518).
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.
Glade Candy Co. (C. C. A.) 29–1584.
106 F. (2d) 962.
Good-Grape Co. (C. C. A.) 14–695.
45 F. (2d) 70.
Goodyear Tire & Rubber Co. (C. C. A.) 25–1707, (S. C.) 26–1521, (C. C. A.) 28–1899.
92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863); 101 F. (2d) 620.
Grand Rapids Varnish Co.[16] (C. C. A.) 13–580.
41 F. (2d) 996.
Gratz et al. (C. C. A.) 1–571, 2–545; (S. C.) 2–564.
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).
Great Atlantic & Pacific Tea Co., The (C. C. A.) 29–1591.
106 F. (2d) 667.
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. v. (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.
Hartman Wholesale Drug Co., Inc., et al. (D. C.) 27–1693.
Haynes & Co., Inc., Justin (C. C. A.) 29–1578.
105 F. (2d) 988.
Helen Ardelle, Inc. (C. C. A.) 28–1894.
101 F. (2d) 718.

[15] For interlocutory matter, see "Memoranda," 28–1954 or 1938 S. & D. 485.
[16] For interlocutory order, see "Memoranda," 20–746, or S. & D. 724.

Heuser, Herman ..... (C. C. A.) 8-628.
4 F. (2d) 632.
Heusner & Son, H. N. ..... (C. C. A.) 29-1580.
106 F. (2d) 596.
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.
Hughes, Inc., E. Griffiths [17] ..... (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.
Illinois Lumber & Material Dealers Ass'n, Inc ..... (C. C. A.) 27-1682.
97 F. (2d) 1005.
Imperial Candy Co ..... (C. C. A.) 28-1894.
101 F. (2d) 718.
Indiana Quartered Oak Co ..... (C. C. A.) 12-721, 16-683.
26 F. (2d) 340; 58 F. (2d) 182.
Inecto, Inc. [18] ..... (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. [19] ..... (C. C. A.) 12-732; (S. C.) 13-593.
29 F. (2d) 518; 280 U. S. 291 (50 S. Ct. 89).
Ironized Yeast Co ..... (C. C. A.) 20-737.
Jenkins, Edward L., et al. (Antisepto Products Co., etc.). ..... (D. C.) 29-1637.
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).
Justin Haynes & Co., Inc ..... (C. C. A.) 29-1578.
105 F. (2d) 988.
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.) 18-684.
63 F. (2d) 81; 291 U. S. 304; (54 S. Ct. 423).

[17] For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 489.
[18] For certain prior interlocutory proceedings, see also "Memoranda," 28-1967 or 1938 S. & D. 488.
[19] For interlocutory order, see "Memoranda," 20-745 or S. & D. 722.

Kinney-Rome Co. (C. C. A.) 4–546.
275 Fed. 665.
Kirk & Co., Jas. S., et al.[20] (C. C. A.) 16–671.
59 F. (2d) 179.
Kirschmann Hardwood Co. (C. C. A.); footnote, 16–684; "Memoranda," 20–739.
Klapp, Charles L. (The Cardinal Co.) (D. C.) 29–1639.
Klesner, Alfred (Shade Shop, etc.) (C. A. of D. C.) 9–650, (S. C.) 11–661; (C. A. of D. C.) 12–717; (S. C.) 13–581.
6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 557); 25 F. (2d) 524; 280 U. S. 19 (50 S. Ct. 1).
Kobi & Co., J. W.[21] (C. C. A.) 11–713.
23 F. (2d) 41.
L. & C. Mayers Co., Inc. (C. C. A.) 27–1675.
97 F. (2d) 365.
Leader Novelty Candy Co., Inc. (C. C. A.) 25–1701.
92 F. (2d) 1002.
Leavitt, Louis[22] (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, 6–559.
290 Fed. 517; 297 Fed. 704 (affirmed 268 U. S. 369; 45 S. Ct. 517).
Lesinsky Co., H. (C. C. A.) 4–595.
277 Fed. 657.
Lewyn Drug, Inc. (D. C.) 28–1951.
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.[23] (C. A. of D. C.) 13–605.
37 F. (2d) 822.
Maisel Trading Post, Inc. (C. C. A.) 20–725, 21–1212, 23–1381.
77 F. (2d) 246, 79 F. (2d) 127, 84 F. (2d) 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).
March of Time Candies, Inc. (C. C. A.) 29–1557.
104 F. (2d) 999.
Marietta Mfg. Co. (C. C. A.) 15–613.
50 F. (2d) 641.
Martha Beasley Associates (J. V. Cordes et al.) (D. C.) 29–1621.
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.

[20] For interlocutory order, see "Memoranda," 20–745 or S. & D. 723.
[21] For interlocutory order, see "Memoranda," 20–745 or S. & D. 721.
[22] For interlocutory order, see "Memoranda," 20–744 or S. & D. 721.
[23] For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus, etc., see "Memoranda," 20–742 or S. & D. 704.

Mayers Co., Inc., L. & C. ..... (C. C. A.) 27-1675.
97 F. (2d) 365.
Maynard Coal Co.[24] ..... (S. C. of D. C.) 3-555, 6-575; (C. A. of D. C.) 11-698.
22 F. (2d) 873.
McLean & Son, A., et al ..... (C. C. A.) 22-1149; 26-1501.
84 F. (2d) 910; 94 F. (2d) 802.
Mennen Co.[25] ..... (C. C. A.) 6-579.
288 Fed. 774.
Mid West Mills, Inc ..... (C. C. A.) 25-1688.
90 F. (2d) 723.
Miller Co., Charles N ..... (C. C. A.) 27-1678.
97 F. (2d) 563.
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.
23 F. (2d) 968; 47 F. (2d) 428.
Mills Novelty Co. et al., U. S. ex rel ..... (S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce, of, et al.[26] (C. C. A.) 4-604, 10-687.
280 Fed. 45; 13 F. (2d) 673.
Minter Brothers, etc ..... (C. C. A.) 28-1885.
102 F. (2d) 69.
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)[27] ..... (C. C. A.) 10-674.
12 F. (2d) 22.
Morrissey & Co., Chas. T., etc ..... (C. C. A.) 14-716.
47 F. (2d) 101.
National Association of Counter Freezer Manufacturers et al. (S. C. of D. C.) 22-1137.
National Biscuit Co.[28] ..... (C. C. A.) 7-603; (D. C.) 24-1618.
299 Fed. 733; 18 F. Supp. 667.
National Biscuit Co., U. S. *v* ..... (D. C.) 27-1697.
25 F. Supp. 329.
National Candy Co ..... (C. C. A.) 29-1557.
104 F. (2d) 999.
National Harness Mfrs. Assn ..... (C. C. A.) 4-539, 3-570.
261 Fed. 170; 268 Fed. 705.
National Kream Co., Inc., and National Foods, Inc. (C. C. A.) 27-1681.
National Optical Stores Co., et al ..... (D. C.). "Memoranda" 28-1970.
National Silver Co ..... (C. C. A.) 24-1627; 28-1957
88 F. (2d) 425.
New Jersey Asbestos Co ..... (C. C. A.) 2-553.
264 Fed. 509.

[24] 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.
[25] For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.
[26] For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.
[27] For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.
[28] For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

Non-Plate Engraving Co.[29] ..... (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; "Memoranda," 20–740.
254 Fed. 988.
Oberlin, Robert C. (Research Products Co.) .. (D. C.) 29–1626.
Ohio Leather Co.[30] ..... (C. C. A.) 4–699.
45 F. (2d) 39.
Oliver Brothers, Inc., et al ..... (C. C. A.) 28–1926.
102 F. (2d) 763.
Oppenheim, Oberndorf & Co. (Sealpax Co.)[31] .. (C. C. A.) 9–629.
5 F. (2d) 574.
Ostermoor & Co., Inc.[32] ..... (C. C. A.) 11–642.
16 F. (2d) 962.
Ostler Candy Co ..... (C. C. A.) 29–1584.
106 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; (C. C. A.) 24–1631.
4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); 88 F. (2d) 1009.
Paramount Famous-Lasky Corp.[33] ..... (C. C. A.) 16–660.
57 F. (2d) 152.
Pearsall Butter Co., B. S.[34] ..... (C. C. A.) 6–605.
292 Fed. 720.
Philip Carey Mfg. Co. et al ..... (C. C. A.) 12–726.
29 F (2d) 49.
Positive Products Co., etc. (Earl Aronberg) ... (D. C.) 29–1634.
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.[35] ..... (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.[36] ..... (C. C. A.) 14–683; (S. C.) 15–598.
42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643 (51 S. Ct. 587).
Raymond Bros.-Clark Co ..... (C. C. A.) 4–625; (S. C.) 7–594.
280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).

[29] For interlocutory order, see "Memoranda," 28–1965 or 1938 S. & D. 485.
[30] For interlocutory order, see "Memoranda," 20–745 or S. & D. 724.
[31] For interlocutory order, see "Memoranda," 20–743 or S. & D. 717.
[32] For interlocutory order, see "Memoranda," 20–744 or S. & D. 720.
[33] For interlocutory order, see "Memoranda," 28–1967 or 1938 S. & D. 487.
[34] For interlocutory order, see "Memoranda," 20–743 or S. & D. 716.
[35] For interlocutory order, see "Memoranda," 20–744 or S. & D. 719.
[36] For interlocutory order of lower court see "Memoranda," 28–1966 or 1938 S. & D. 486.

Real Products Corp. et al. 90 F. (2d) 617. (C. C. A.) 25-1685.
Republic Iron & Steel Co. (D. C.) (S. C. of D. C.), footnote, 3-543.
Research Products Co. (Robert C. Oberlin) (D. C.) 29-1626.
Ritholz, Benjamin D. et al. 105 F. (2d) 937. (C. C. A.) 22-1145; (D. C. of D. C.) 27-1696; (C. A. of D. C.) 29-1569.
Rittenhouse Candy Co. (Sol Block et al.) (C. C. A.) 26-1497.
Rogers Candy Co. 101 F. (2d) 718. (C. C. A.) 28-1894.
Ron-Al Medicine Co., Dr., etc. (Irving Sofronski). (D. C.) 29-1624.
Royal Baking Powder Co.[37] 281 Fed. 744; 32 F. (2d) 966. (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.[38] 58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335). (C. C. A.) 16-679; (S. C.) 17-664.
Ryan Candy Co. (Southern Premium Manufacturing Co., etc.). 83 F. (2d) 1008. (C. C. A.) 22-1143.
Savage Candy Co. 92 F. (2d) 1003. (C. C. A.) 25-1705.
Sea Island Thread Co., Inc. 22 F. (2d) 1019. (C. C. A.) 11-705.
Sealpax Co. (Oppenheim, Oberndorf & Co)[39] 5 F. (2d) 574. (C. C. A.) 9-629.
Sears, Roebuck & Co. 258 Fed. 307. (C. C. A.) 1-562, 2-536.
Shade Shop, etc., Alfred Klesner doing business under name of, see Klesner, Alfred.
Shakespeare Co. 50 F. (2d) 758. (C. C. A.) 15-609.
Sheffield Silver Co., Inc. 98 F. (2d) 676. (C. C. A.) 27-1689.
Sherwin et al. *v.* U. S. (Lee, U. S. *v.*) 290 Fed. 517; 297 Fed. 704 (affirmed, 268 U. S. 369); (45 S. Ct. 517). (D. C.); (C. C. A.), footnote, 6-559.
Shupe-Williams Candy Co. 106 F. (2d) 962. (C. C. A.) 29-1584.
Sifers Confection Co. (H. I. Sifers, etc.) 84 F. (2d) 999. (C. C. A.) 22-1147.
Silver Co., L. B. 289 Fed. 985; 292 Fed. 752. (C. C. A.) 6-559, 608.

[37] 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.

[38] For interlocutory order of lower court, see "Memoranda," 28-1966 or 1938 S. & D. 486.

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

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 share Co. (D. C.) 13–563, 17–637.
34 F. (2d) 323; 1 F. Supp., 247.
Sofronski, Irving (Dr. Ron-Al Medicine Co., etc.). (D. C.) 29–1624.
Southern Hardware Jobbers Assn. (C. C. A.) 6–597.
290 Fed. 773.
Southern Premium Manufacturing Co., etc. (Ryan Candy Co.). (C. C. A.) 22–1143.
83 F. (2d) 1008.
Sowles, M. H. (D. C.) "Memoranda" 20–740.
Standard Education Society (C. C. A.) 10–751; 24–1591; (S. C.) 25–1715; (C. C. A.) 26–1524; (C. C. A.), 27–1680.
14 F. (2d) 974; 86 F. (2d) 692; 302 U. S. 112 (58 S. St. 113); 97 F. (2d) 513.
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.
Startup Candy Co. (C. C. A.) 28–1951.
102 F. (2d) 1015.
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.[40] (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.
U. S. *v.* National Biscuit Co. (D. C.) 27–1697.
25 F. Supp. 329.
Utah-Idaho Sugar Co. (C. C. A.) 11–692.
22 F. (2d) 122.
Viscose Co. et al. (D. C). "Memoranda" 28–1970.
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.[41] (C. C. A.) 20–713.
75 F. (2d) 733.
Ward Baking Co. (C. C. A.) 2–550.
264 Fed. 330.
Western Chemicals, Inc. et al. (D. C.) 28–1939.

[40] For interlocutory order, see "Memoranda," 20–743 or S. & D. 717.
[41] For interlocutory order, see "Memoranda," 28–1968 or 1938 S. & D. 490.

Western Meat Co. ..... (C. C. A.) 8-589, 623; (S. C.) 11-629; (C. C. A.) 13-559.
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554 (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.[42] ..... (C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).
Winston Co., John C.[43] ..... (C. C. A.) 8-625.
3 F. (2d) 961.
Woolley, E. R. ..... (C. C. A.) 11-692.
22 F. (2d) 122.
Zelle Co., The (Leland F. Benham) ..... (D. C.) 29-1631.
Ziegler Co., George ..... (C. C. A.) 24-1625.
90 F. (2d) 1007.

[42] For interlocutory order, see "Memoranda," 20-742 or S. & D. 715.
[43] For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1939, TO NOVEMBER 30, 1939

IN THE MATTER OF

E. E. PHILLIPS, TRADING AS COTTON BELT MATTRESS COMPANY

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

Docket 3781. Complaint, May 2, 1939—Decision, June 3, 1939

Where an individual engaged in manufacture, sale, and distribution of mattresses and bedding to purchasers at their respective points of location in other States—

(*a*) Represented through such statements on labels and advertising as "All Layer Felt" and "100% Layer Felt—Staple Cotton" that certain of his mattresses were made of all layer felt and that other of his said products were 100 percent layer felt and made of staple cotton, notwithstanding fact that said products thus referred to were not all layer felt as long understood from word felt, used in connection with such products, in the mattress trade, by wholesalers and retailers selling and distributing mattresses, and by members of purchasing public as meaning product made of fibers of cotton or wool which had been garnetted together into a mat or web and were not, in case of others thus designated, made of staple cotton considered as above set forth as meaning full length fiber cotton; and

(*b*) Represented through such statements on labels and in advertising matter as "Felt-Plated—Cleaned Cotton Motes" and "Felt-Plated—Washed Cotton" that certain of his mattresses were felt-plated and made of or filled with cleaned cotton motes, and that other of his mattresses were felt-plated and made of or filled with washed cotton, notwithstanding fact that said products thus referred to were not felt-plated or constructed with layer of felt on top and on underside of mattress and covered with ticking, as understood as above set forth, or made of or filled with cleaned cotton motes or waste cotton or cotton fragments, as understood as above described, and were not made of or filled with washed cotton;

With effect of misleading and deceiving substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true and into purchase, by reason of such erroneous and mistaken belief, of his said products:

Held, That such acts and practices, as above set forth, were all to the injury and prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. L. E. Creel, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that E. E. Phillips, an individual trading as Cotton Belt Mattress Co., hereinafter referred to as respondent, has violated the provisions of the 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 E. E. Phillips is an individual trading as Cotton Belt Mattress Co. and having his office and principal place of business located in the town of Pinetops, State of North Carolina. Respondent is now, and has been for more than 1 year last past, engaged in the business of the manufacture, sale, and distribution of mattresses and bedding. Respondent sells and distributes said merchandise to wholesalers, retailers and other purchasers thereof. In the course and conduct of his business as aforesaid the respondent causes said merchandise, when sold, to be transported from his aforesaid place of business in the State of North Carolina to the purchasers thereof at their respective points of location in various States of the United States, other than the State of North Carolina, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise 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 said business the respondent has been, and is now, engaged in the practice of falsely representing the constituent fiber and material of his said mattresses by means of false and misleading statements and representations placed by respondent on labels attached to said products and used in various other advertising matter, all of which are distributed in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations, disseminated as aforesaid, are the following:

ALL LAYER FELT
100% LAYER FELT—STAPLE COTTON
FELT-PLATED—CLEANED COTTON MOTES
FELT-PLATED—WASHED COTTON

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondent represents to prospective purchasers situated in vari-

ous States of the United States and in the District of Columbia that certain of his mattresses are made of all layer felt, that other of his mattresses are 100 percent layer felt and are made of staple cotton, that other of his mattresses are felt-plated and are made of or filled with cleaned cotton motes, and that other of his mattresses are felt-plated and are made of or filled with washed cotton.

PAR. 3. The aforesaid statements and representations by the respondent, used and disseminated as aforesaid, are grossly exaggerated, false and misleading.

The word "felt," when used in connection with mattresses, has been for many years, and is now, considered in the mattress trade, by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of fibers of cotton or wool which have been garnetted together into a mat or web. The term "staple cotton" is considered, as aforesaid, to mean full length fiber cotton. The term "cotton motes" is considered, as aforesaid, to mean waste cotton or cotton fragments. The term "felt-plated," when used as descriptive of a mattress, is considered, as aforesaid, to mean that the mattress has a layer of felt on its top and also on its underside and is covered with ticking.

In truth and in fact the mattresses which the respondent represents as aforesaid as being "All Layer Felt" are not all layer felt. The mattresses which the respondent represents as aforesaid as being "100% Layer Felt—Staple Cotton" are not 100 percent layer felt and are not made of staple cotton. The mattresses which the respondent represents as aforesaid as being "Felt-Plated—Cleaned Cotton Motes" are not felt-plated and are not made of or filled with cleaned cotton motes. The mattresses which the respondent represents as aforesaid as being "felt-plated—washed cotton" are not felt-plated and are not made of or filled with washed cotton.

PAR. 4. The use by the respondent of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of respondent's products because of said erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 2, 1939, issued and thereafter served its complaint in this proceeding upon respondent, E. E. Phillips, individually and trading as Cotton Belt Mattress Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 10, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. 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 E. E. Phillips is an individual trading as Cotton Belt Mattress Co. and having his office and principal place of business located in the town of Pinetops, State of North Carolina. Respondent is now, and has been for more than 1 year last past, engaged in the business of the manufacture, sale, and distribution of mattresses and bedding. Respondent sells and distributes said merchandise to wholesalers, retailers and other purchasers thereof. In the course and conduct of his business as aforesaid the respondent causes said merchandise, when sold, to be transported from his aforesaid place of business in the State of North Carolina to the purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina, and at all times mentioned herein has maintained a course of trade in commerce in said merchandise 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 said business the respondent has been, and is now, engaged in the practice of falsely representing the constituent fiber and material of his said mattresses by means of false and misleading statements and representations placed by respondent on labels attached to said products and used in various other advertising matter. Among and typical of the statements and representations disseminated as aforesaid, are the following:

ALL LAYER FELT
100% LAYER FELT—STAPLE COTTON
FELT-PLATED—CLEANED COTTON MOTES
FELT-PLATED—WASHED COTTON

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondent represents to prospective purchasers situated in various States of the United States and in the District of Columbia that certain of his mattresses are made of all layer felt, that other of his matresses are 100% layer felt and are made of staple cotton, that other of his mattresses are felt-plated and are made of or filled with cleaned cotton motes, and that other of his mattresses are felt-plated and are made of or filled with washed cotton.

PAR. 3. The aforesaid statements and representations by the respondent, used and disseminated as aforesaid, are grossly exaggerated, false and misleading.

The word "felt," when used in connection with mattresses, has been for many years, and is now, considered in the mattress trade, by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of fibers of cotton or wool which have been garnetted together into a mat or web. The term "staple cotton" is considered, as aforesaid, to mean full length fiber cotton. The term "cotton motes" is considered, as aforesaid, to mean waste cotton or cotton fragments. The term "felt-plated," when used as descriptive of a mattress, is considered, as aforesaid, to mean that the mattress has a layer of felt on its top and also on its underside and is covered with ticking.

In truth and in fact the mattresses which the respondent represents as aforesaid as being "All Layer Felt" are not all layer felt. The mattresses which the respondent represents as aforesaid as being "100% Layer Felt—Staple Cotton" are not 100 percent layer felt and are not made of staple cotton. The mattresses which the respondent represents as aforesaid as being "Felt-Plated—Cleaned Cotton Motes" are not felt-plated and are not made of or filled with cleaned cotton motes. The mattresses which the respondent represents as aforesaid as being "felt-plated—washed cotton" are not felt-plated and are not made of or filled with washed cotton.

PAR. 4. The use by the respondent of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations

are true, and into the purchase of respondent's products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, E. E. Phillips, individually and trading as Cotton Belt Mattress Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "felt" alone or in conjunction with any other term or terms to designate, describe, or refer to any mattress, or part thereof, which is not made of fibers of cotton or wool garnetted together into a mat or web.

2. Using the term "staple cotton" or any other term or terms of similar import or meaning to designate, describe, or refer to any product which is not full length fiber cotton.

3. Representing that such mattresses are made of or filled with cleaned cotton motes or washed cotton unless and until such is the fact.

4. Representing that respondent's mattresses are felt-plated unless said mattresses have a layer of felt on their top and also on their underside.

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

LEWYN DRUG, INCORPORATED

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

Docket 2934. Complaint, Mar. 9, 1939 [1]*—Decision, June 6, 1939* [2]

Where a corporation engaged in sale of medicinal preparations designed for treatment of unnatural delayed menstruation, and known as "Dr. Haller's Prescription 5000" and "Dr. Haller's Prescription 2000," to purchasers in other States and in the District of Columbia; in advertisements which it disseminated through the mails and through newspapers and periodicals of general circulation, and which were calculated and intended to induce purchase of said preparations—

Made such statements and representations as "In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions," "Works like magic—women say," "I believe it is the only successful treatment on the market," "Physicians recommend Dr. Haller's prescriptions," and "You can trust us because we have satisfactorily served women for over fifty years";

Facts being such representations were false, misleading and untrue, said preparation was not a competent, safe nor scientific treatment for aforesaid purpose, nor recommended by physicians, and advertisements in question were also false in failing to reveal that use of preparations in question, under conditions prescribed and under such conditions as are customary and usual, might result in serious illness and, in some cases, in death of user;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such erroneous and mistaken belief, to purchase its said medicinal preparations, with injurious drugs therein contained:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Charles P. Vicini* and *Mr. William C. Reeves*, trial examiners.

Mr. Reuben J. Martin for the Commission.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

[1] Amended and supplemental.

[2] Prior cease and desist order made as of November 6, 1937, and reported in 25 F. T. C. 1348 was vacated, and case remanded for the taking of further testimony on behalf of Commission and on behalf of respondent, by order made as of November 10, 1938, and reported in 27 F. T. C. 1483.

Trade Commission, having reason to believe that Lewyn Drug, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lewyn Drug, Inc., is a corporation organized and created under and by virtue of the laws of the State of California, with its principal office and place of business located at 655 North Arden Boulevard, in the city of Hollywood, State of California. The respondent is now and for several years last past has been engaged in the sale of medicinal preparations designed for the treatment of unnaturally delayed menstruation and known as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000. Respondent causes said preparations, when sold by it, to be transported from its aforesaid place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparations, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products; in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions.

Works like magic—women say.

I believe it is the only successful treatment on the market.

Physicians recommend Dr. Haller's prescriptions.

You can trust us because we have satisfactorily served women for over fifty years.

The representations hereinbefore set out, and other representations similar thereto but not set out herein, appearing in respondent's advertisements, are false, misleading, and untrue. This preparation is not a competent, safe nor scientific treatment for delayed menstruation. It is not recommended by physicians. Said advertisements of respondent are also false in that they fail to reveal that the use of these preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual may result in the serious illness and in some cases the death of the user.

The true facts are that the use of either of these preparations may result in gastro-intestinal disturbances such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poison.

PAR. 3. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its preparations disseminated as aforesaid 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 and mistaken belief that said statements and representations are true and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 4. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 9, 1939, issued and served its amended and supplemental complaint upon respondent, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 11, 1939, respondent filed its answer in which it admitted all the material allegations

of fact set forth in said amended and supplemental complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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, Lewyn Drug, Inc., is a corporation organized and created under and by virtue of the laws of the State of California, with its principal office and place of business located at 655 North Arden Boulevard, in the city of Hollywood, State of California. Respondent is now and for several years last past has been engaged in the sale of medicinal preparations designed for the treatment of unnatural delayed menstruation and known as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000. Respondent causes said preparations, when sold by it, to be transported from its aforesaid place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs 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 aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparations, by the United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said adver-

tisements disseminated and caused to be disseminated, as aforesaid, are the following:

In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions.

Works like magic—women say.

I believe it is the only successful treatment on the market.

Physicians recommend Dr. Haller's prescriptions.

You can trust us because we have satisfactorily served women for over fifty years.

The Commission finds that the representations hereinbefore set out and other representations similar thereto not set out herein, appearing in respondent's advertisements, are false, misleading and untrue. This preparation is not a competent, safe, nor scientific treatment for delayed menstruation. It is not recommended by physicians. Said advertisements of respondent are also false in that they fail to reveal that the use of these preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual may result in the serious illness, and in some cases, in the death of the user.

The true facts are that the use of either of these preparations may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poisoning.

PAR. 3. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparations disseminated as aforesaid, 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 and mistaken belief that such statement and representations are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Lewyn Drug, Inc., its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement, by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations now designated by the name of Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act of said medicinal preparations which advertisements represent directly or through implication that the use of said medicinal preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and which advertisements fail to reveal that the use of these preparations may result in the serious injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after service upon it of this order, file with the Commission an interim report in writing, stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that, within 60 days after the service upon it of this order, said respondent shall 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

O. K. TAILORING 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 3404. Complaint, May 6, 1938—Decision, June 7, 1939

Where a corporation engaged in sale and distribution to members of purchasing public in other States and in the District of Columbia of men's suits and garments, among other items of merchandise; in advertising its said suits and garments in newspapers and other advertising media circulating among the various States and in said District—

(*a*) Represented that said garments and suits were made wholly of wool through such statements as "All Wool Made-To-Measure Clothes," "All Wool Fabrics" and "100% All Wool," facts being said products were not made wholly of wool, but, in the case of many, were made of wool and rayon, wool, and cotton, or wool, cotton and rayon;

(*b*) Represented that suits were given away free of charge by it to salesmen selling its said products through such statements as "Wear This *Free Suit* given you as a bonus" and "Will You Accept Free as a bonus a complete wardrobe of Tailored Suits?" and "Chance to Get Made-To-Measure Suit Free as a bonus right away! Wear it!", facts being it did not give away free of charge suits to salesmen selling its said merchandise, but compensated its said salesmen under an arrangement by which agent or employee, in addition to commission paid him on each suit sold, was entitled to receive from it for sale of as many as seven suits, suit for self; and

(*c*) Represented that its lines of garments and suits for men were "The Fastest Selling Lines in America," and that it paid a salesman as compensation for selling single suit $7, suit of clothes and cash bonus through such statements as "The Fastest Selling Lines in America" and "Make up to $7 per suit including Suit Free of cost plus Cash Bonus," facts being its said lines were not the fastest selling, it did not pay as high as $7 in cash, and give salesman suit and cash bonus for sale of single suit, but compensated him through payment of commission ranging from $3 to $6.50 for each suit sold, with sale of seven suits, as above set forth, entitling him to suit for himself, and with order for 25 suits entitling him to $25 cash bonus and certain additional commissions;

With effect of misleading substantial number of salesmen and their customers into erroneous and mistaken belief that all said representations were true and with result, as direct consequence, that number of salesmen and their customers purchased substantial number of its garments and suits, and trade was diverted unfairly to it from competitors likewise engaged in sale and distribution of such products and who do not misrepresent the quality or popularity of their merchandise and nature and amount of compensation paid to salesmen thereof:

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. Robert S. Hall*, trial examiner.

Mr. Karl Stecher, *Mr. Floyd O. Collins* and *Mr. George Foulkes* for the Commission.

Mr. Raymond J. Moudry, of Chicago, Ill., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that O. K. Tailoring Co., Inc., hereinafter referred to as respondent, has violated the provisions of the 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, O. K. Tailoring Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business located at 325 South Market Street, in the city of Chicago, State of Illinois. It is now, and has been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, suits, and garments for men.

Respondent causes said suits and garments for men to be transported from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof located at points in States of the United States other than the State of Illinois and in the District of Columbia. It maintains and for a period of more than 1 year last past has maintained a course of trade and commerce in said suits and garments for men between and among the various States of the United States and in the District of Columbia.

Par. 2. Respondent has been and is engaged in substantial competition in the sale and distribution of said suits and garments for men with other corporations and with firms and individuals likewise engaged in the business of selling and distributing suits and garments for men 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 and for the purpose of inducing the purchase of its suits and garments for men 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 suits and garments for men. In said advertisements respondent has made or caused to be made various representations concerning the quality of its products and also

concerning the nature and character of its business and its offers to the public, among which are the following:

All Wool Made-To-Measure Clothes.
ALL WOOL FABRICS.
100% All Wool.
Wear This *FREE SUIT* given you as a bonus.
Will You Accept FREE as a bonus a complete wardrobe of *Tailored Suits?*
Chance to Get Made-To-Measure Suit *FREE* as a bonus right away! Wear it!
No limit to number of Free Bonus Suits given you.
I'll keep you in clothes for the rest of your life without it costing you a penny.
Fine Traveling Case and large samples *FREE.*
We'll send you our big expensive selling outfit FREE OF CHARGE.
The Fastest Selling Lines in America.
Make up to $7 per suit including Suit Free of cost plus Cash Bonus.

PAR. 4. The aforesaid statements made by respondent in the offering for sale and sale of its suits and garments for men as set forth in paragraph three hereof purport to be descriptive of its merchandise and serve as representations to the purchasing public: That the suits and garments for men offered for sale and sold by respondent are made wholly of wool; that respondent gives away suits free of charge; that respondent gives away, free of charge of any kind, a fine traveling case and a big expensive selling outfit; that the lines of suits and garments for men offered for sale and sold by respondent are the fastest selling lines in America and that respondent pays as compensation for the sale of one single suit as high as $7 in cash plus a suit of clothes plus a cash bonus.

PAR. 5. In truth and in fact the representations made or caused to be made by respondent as hereinbefore set out and the inferences thereby created in the mind of the public are false and misleading in that: All of the suits and garments offered for sale and sold by respondent are not made wholly of wool. Respondent does not give away suits free of charge. Respondent does not give away free of charge a fine traveling case and a big expensive selling outfit. Respondent has no authoritative statistics upon which to base its assertion that it offers the fastest selling lines in America. Respondent does not pay as high as $7 in cash plus a suit of clothes plus an additional cash bonus as compensation for the sale of a single suit of clothes. The merchandise represented by respondent to be given away free is given only as compensation for services rendered or expected to be rendered to it.

PAR. 6. There are now and have been competitors of respondent selling and distributing suits and garments for men in commerce among and between the various States of the United States and in the District of Columbia who do not in the offering for sale and sale

of their products misrepresent the nature, character, quality, popularity, or method or manner of, or compensation paid for, the sale or distribution of said products and who do not represent that such or other products or articles are given away free by them when such is not the fact.

PAR. 7. The false and misleading representations made by respondent in the offering for sale and sale of its suits and garments for men, as hereinabove set out, had and have the capacity and tendency to and did and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief: That all of said suits and garments are made wholly of wool; that suits may be obtained from respondent free of charge; that a fine traveling case and a big expensive selling outfit may be obtained from respondent free of charge; that respondent's suits and garments for men constitute the fastest selling lines in America; and that it is possible for one to earn as much as $7 in cash plus a cash bonus plus a suit of clothes for selling one single suit for respondent.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase suits and garments for men from respondent and thereby trade has been and is unfairly diverted to respondent from competitors named in paragraphs 2 and 6 hereof. 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. 8. The aforesaid acts and practices of the respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1938, issued and on May 9, 1938, served its complaint in this proceeding upon respondent, O. K. Tailoring Co., 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 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 Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Raymond J. Moudry, attorney for respondent,

before Robert S. Hall, 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, respondent not having filed brief, 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. Respondent, O. K. Tailoring Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business located at 325 South Market Street, in the city of Chicago, State of Illinois. Respondent is now, and has been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, suits, and garments for men. Respondent causes said suits and garments for men to be transported from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof located at points in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains and for a period of more than one year last past has maintained a course of trade in commerce in said suits and garments for men between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has been and is engaged in substantial competition in the sale and distribution of said suits and garments for men with other corporations and with firms and individuals likewise engaged in the business of selling and distributing suits and garments for men 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 and for the purpose of inducing the purchase of its suits and garments for men by members of the purchasing public, respondent has from time to time inserted advertisements in newspapers and in other advertising media, having a circulation among and between the various States of the United States and in the District of Columbia, designed and intended to influence purchasers of said suits and garments for men. In said advertisements respondent has made or caused to be made

various representations concerning the quality of its products and also concerning the nature and character of its business and its offers to the public, among which are the following:

All Wool Made-To-Measure Clothes.
ALL WOOL FABRICS.
100% ALL WOOL.
Wear This *FREE SUIT* given you as a bonus.
Will You Accept FREE as a bonus a complete wardrobe of Tailored Suits?
Chance to Get Made-To-Measure Suit FREE as a bonus right away! Wear it!
No limit to number of Free Bonus Suits given you.
I'll keep you in clothes for the rest of your life without it costing you a penny.
We'll send you our big expensive selling outfit FREE OF CHARGE.
The Fastest Selling Lines in America.
Make up to $7 per suit including Suit Free of cost plus Cash Bonus.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that:

1. The garments and suits offered for sale and sold by respondent are made wholly of wool.

2. Suits are given away free of charge by respondent to salesmen who sell respondent's garments and suits.

3. The lines of respondent's garments and suits for men are the fastest selling lines in America.

4. That respondent pays a salesman, as compensation for the sale of a single suit of clothes, the amount of $7 and a suit of clothes and cash bonus.

PAR. 4. The aforesaid statements and representations made by respondent in offering for sale and selling its garments and suits for men are false and misleading. In truth and in fact the garments and suits for men, offered for sale and sold by respondent, are not made wholly of wool. The testimony shows and the Commission finds that many of the respondent's garments and suits are made of wool and rayon, wool and cotton, or wool, cotton and rayon.

In truth and in fact, suits are not given away free of charge by respondent to salesmen who sell respondent's merchandise. Respondent's sales plan is as follows: Respondent's salesmen are paid a commission varying from $3 to $6.50 per suit for every suit of clothing sold by them. When a salesman sells as many as seven suits he may receive from respondent a suit of clothes. When a salesman sends respondent orders for twenty-five suits, respondent pays the salesman a $25 cash bonus and raises the salesman's commission $1 for every suit sold by said salesman. This $25 bonus and $1 raise in commission is in addition to the extra suit which the salesman

receives for every seven suits sold by said salesman. The Commission finds that the extra suits received by agents from respondent for the sale of seven suits of clothes are not free, but are part of the salesman's compensation for selling respondent's merchandise.

Respondent's lines of garments and suits are not the fastest selling lines in America.

Respondent does not pay as high as $7 in cash and give a salesman a suit of clothes and cash bonus for the sale of a single suit of respondent's clothes, but compensates all the salesmen in the manner above set forth.

Each and all of the false and misleading statements and representations made by respondent in offering for sale and selling its garments and suits for men had, and now have, the capacity to, and do, mislead a substantial number of salesmen and their customers into the erroneous and mistaken belief that all of said representations are true. As a direct result thereof, a number of salesmen and their customers have purchased a substantial number of respondent's garments and suits for men, with the result that trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing suits and garments for men and who do not misrepresent the quality or popularity of their merchandise, or the nature and amount of compensation paid to salesmen thereof.

CONCLUSION

The aforesaid 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 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, 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 allegations of the complaint (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, O. K. Tailoring Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of suits and garments for men in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified word "wool" or any other word or words of similar import or meaning to designate or describe any fabric or other products which are not composed wholly of wool, provided that in the case of a fabric or product composed in part of wool, and in part of a material or materials other than wool, such words may be used as descriptive of the wool content if there is used in immediate connection therewith in letters of equal size and conspicuousness a word or words accurately describing and designating each constituent fabric or material thereof in the order of its predominance by weight beginning with the largest single constitutent.

2. Using the term "free" or any other term or terms of similar import or meaning to designate or refer to merchandise regularly offered as compensation for distributing respondent's merchandise.

3. Representing that respondent's garments or suits are the fastest selling lines of such merchandise in America.

4. Representing that respondent's agents, representatives, distributors or salesmen receive any specified compensation, whether expressed in terms of money or merchandise or both, for the sale of respondent's merchandise unless such agents, representatives, distributors or salesmen in fact receive such compensation and there is no deception as to the services to be performed in connection with obtaining such compensation.

This order shall not be construed as permitting the use of the unqualified word "wool" to designate, describe or refer to any wool which is not virgin wool.

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

WILLIAM J. CRESSY AND MRS. EFFIE M. ROBERTSON, DOING BUSINESS AS FLYING INTELLIGENCE SERVICE

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

Docket 3431. Complaint, May 20, 1938—Decision, June 7, 1939

Where an individual engaged in selling and distributing through the mails aviation manual of instruction and information to purchasers in various other States, in substantial competition with those engaged in sale and distribution among the various States of courses of instruction in flying, and books, pamphlets, and other information pertaining to aeronautics—

Represented that he conducted a flying school and had facilities for training persons in field of aviation and would furnish or procure jobs for students either during or after their course, and was affiliated with or sponsored by the United States Air Corps or connected therewith and that purchasers of the said manual would receive training by said Air Corps, through such advertisements in personal, special notice and instruction columns of newspapers throughout the United States as "Wanted, names, Men under 26 who are willing to work for $75 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service," etc., and through such statements in form letter sent to those replying to aforesaid advertisement and setting forth development of aviation and, in glowing terms, opportunities for jobs in commercial aviation for those trained in the Air Corps aviation school as, referring to his said manual, "* * * answers most any question that you may have in regard to the Air Corps and is sent to you prepaid upon the receipt of $3 from you," and "nothing else to buy" and "this money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school," and "Students are furnished uniforms, work clothes," etc., and "paid $75.00 a month while training," etc., and "would cost at least $3,000 if acquired at any other school, yet it is absolutely FREE HERE";

Facts being said individual at no time conducted flying school, had no facilities for training persons in field in question, never offered jobs to students of aviation, purchasers of his said manual, containing substantially same information as that in pamphlet furnished free by Air Corps, did not, by reason of such purchase, receive year's training by Air Corps, with or without cost, and he did not inform such purchasers that, in order to receive return of money paid for manual, they would be required to make formal application for admission to United States Air Corps training school and be formally denied such admission, and accompany application for refund with such formal rejection, nor disclose exacting and difficult qualifications necessary to entitle applicant to be received in training school in question, under which only those especially well qualified educationally, physically and otherwise have any chance of admission;

With result that many purchasers of his said manual, upon being advised of such requirements, never applied for admission to school in question and therefore did not and could not secure return of purchase price paid for manual, and substantial portion of purchasing public was misled and deceived into erroneous belief that such various representations were true and, as consequence, purchased substantial quantities of his said manuals, and substantial amount of trade was diverted to him from competitors who did not make such false or misleading representations respecting courses of instruction in flying in their books and pamphlets and other aeronautics information:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Willam J. Cressy and Mrs. Effie M. Robertson, individuals, doing business as Flying Intellegence Service, hereinafter referred to as respondents, have violated the provisions of the 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 as follows:

Paragraph 1. The respondents, William J. Cressy and Mrs. Effie M. Robertson, are individuals doing business as Flying Intelligence Service at 2521 North Fifty-sixth Street, Milwaukee, Wis. They are engaged in the sale and distribution, through the mails, of a manual of instruction and information, designated as an Aviation Manual, concerning the United States Air Service.

Respondents now cause, and for several months last past have caused, their aviation manual, when sold by them, to be sent by mail from their said place of business in Milwaukee, Wis., to the purchasers thereof, located in the various States of the United States, other than Wisconsin, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said Aviation Manual 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.

Respondents are, and at all times mentioned herein have been, in substantial competition with other individuals, and with corporations and partnerships, engaged in the sale and distribution of

courses of instruction in flying and in the sale and distribution of books, pamphlets and other information pertaining to aeronautics, in commerce betweeen 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 aforesaid, respondents represent that they are conducting a flying school, offering training in the field of aviation, and that they are affiliated with, or are sponsored by, the United States Air Corps. Respondents represent further that they will give jobs to men, who are willing to work for $75 a month, while training to become aviators or ground mechanics.

The aforesaid representations are made by respondents through the medium of classified advertisements placed in the "personal," "special notice," or "instruction" columns of newspapers throughout the United States. Representative of the classified advertisements is the following:

Wanted, names, MEN under 26 who are willing to work for $75.00 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service. Box, 522, Milwaukee, Wis.

Persons answering the above advertisement receive a form letter from respondents which gives a brief history of the development of aviation and paints a glowing picture of the opportunities for jobs in the commercial aviation field for those who have been trained in the Air Corps aviation school. Said letter also contains, among others, the following statement relative to respondents' said Aviation Manual:

This information has been very carefully compiled, so that it answers most any question that you may have in regard to the Air Corps, and is sent to you postpaid upon receipt of Three Dollars from you. It is complete, there is nothing else to buy. This money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school.

Upon receipt of the three dollars, respondents mail a copy of the aforementioned manual to the purchaser. The manual was prepared by the respondents and contains substantially the same information contained in a pamphlet called "Flying Cadets of the Army Air Corps," which pamphlet is furnished free by the United States Air Corps to anyone asking for it. In fact, a large portion of the information contained in the respondents' Aviation Manual was taken from the said "Flying Cadets of the Army Air Corps."

The respondents' aforesaid representations are untrue in that respondents do not conduct a flying school or offer training in the field

of aviation. They offer no jobs to students of aviation and they are not affiliated or otherwise connected with the United States Air Corps. Purchasers of said Aviation Manual do not receive one year's training given by the United States Air Corps without cost.

PAR. 3. The respondents represent in their aforementioned form letter that they will refund the purchase price of the Aviation Manual in the event the purchaser is not accepted for training after making application for admission to the United States Air Corps training school. Respondents do not apprise the prospect, however, that it will be necessary for him to make a formal application for admission to the said training school, be formally denied admission thereto, and that said formal notice of rejection of the application must be forwarded to the respondents before the prospect is entitled to a refund of the said purchase price. Said refund is made, if at all, only after purchasers have made formal application for admission to the United States Air Corps training school and have received formal notice of rejection of their application, which notice must be submitted to the respondents. Respondents' said letter does not disclose to the prospect the qualifications necessary to gain admission to the said training school. In fact, it is only after the prospect has purchased and read respondents' said Aviation Manual which contains an outline of the qualifications necessary for admission to said school that said prospect learns that the educational, physical and other requirements are such that only those who are especially well qualified educationally, physically and otherwise have any chance of gaining admission thereto. Consequently, many prospects never apply for admission to the said school which is one of the prerequisites to the aforementioned refund of the purchase price of respondents' said Aviation Manual.

PAR. 4. There are among the competitors of the respondents, as mentioned in paragraph 1 hereof, individuals, partnerships and corporations engaged in the sale and distribution of courses of instruction in flying or in the sale and distribution of books, pamphlets and other information pertaining to aeronautics who do not misrepresent the type of business they are engaged in, the nature of the course of instruction or the kind of information offered, the amount students can earn while in training, their connection with the United States Air Corps, or otherwise falsely advertise their business.

PAR. 5. The use by the respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled a substantial number of the student public into the erroneous belief that such representations are true and into the purchase of a substantial number of respondents' course of in-

struction as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondents from their aforesaid competitors and as a result thereof a 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 acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of May, A. D., 1938, issued and served its complaint in this proceeding upon the respondents William J. Cressy and Mrs. Effie M. Robertson, individuals doing business as Flying Intelligence Service, 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, no answer having been filed by respondents, testimony and other evidence in support of the allegations of said complaint were introduced by Dewitt T. Puckett, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it. All of the testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence was offered on behalf of the respondents, nor were they represented by counsel. All of the 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 testimony and other evidence, brief in support of the complaint, no brief having been filed by respondents, 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, William J. Cressy, from February 1937, to February 24, 1938, was engaged in the business of selling and distributing through the mails a manual of instructions and information, designated as an aviation manual, to purchasers thereof located in various States of the United States other than the State of Wis-

consin. Respondent's place of business was located at 2521 North Fifty-sixth Street, Milwaukee, Wis.

PAR. 2. Respondent, Mrs. Effie M. Robertson, was not a partner in the business conducted by respondent, William J. Cressy, her only interest therein was the remuneration which she received for stenographic and clerical services.

PAR. 3. Respondent, William J. Cressy, during the time he was engaged as hereinbefore set forth, was in substantial competition with individuals, partnerships, and corporations engaged in the business of selling and distributing in commerce between and among the various states of the United States, courses of instruction in flying and books, pamphlets, and other information pertaining to aeronautics.

PAR. 4. Respondent, William J. Cressy, caused to be placed in the "Personal," "Special Notice," and "Instruction" columns of newspapers throughout the United States an advertisement reading as follows:

Wanted, names, MEN under 26 who are willing to work for $75 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service, Box 522 Milwaukee, Wisconsin.

Respondent, William J. Cressey, by said advertisement represented that he was affiliated with or was sponsored by the United States Air Corps, when in fact he never was so affiliated or sponsored. Said respondent at no time conducted a flying school, nor has he ever had any facilities for training persons in the field of aviation, nor has he ever offered jobs to students of aviation.

PAR. 5. Persons answering respondent William J. Cressy's said advertisement received from him a form letter, giving the history of the development of aviation and painting in glowing terms the opportunities for jobs in commercial aviation for those trained in the Air Corps Aviation School. Said letter contained, among other things, the following statements relative to said respondent's aviation manual:

This information has been carefully compiled, so that it answers most any question that you may have in regard to the Air Corps, and is sent to you prepaid upon the receipt of $3.00 from you. It is complete, there is nothing else to buy. This money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school.

Students are furnished uniforms, work clothes, board, room and transportation to the field from their homes and in addition are paid $75.00 a month

while training and when completed they have had a course of training that would cost at least $3000 if acquired at any other school, yet it is absolutely FREE HERE.

PAR. 6. The recipient of said form letter, upon payment of $3, received one of respondent William J. Cressy's aviation manuals. This manual contained substantially the same information contained in a pamphlet entitled "Flying Cadets of the Army Air Corps," which was and is furnished free by the United States Air Corps to anyone requesting the same.

PAR. 7. Purchasers of respondent William J. Cressy's aviation manual did not by reason of said purchase receive one year's training by the United States Air Corps, with or without cost. The said respondent in his said form letter did not inform the purchasers of his said aviation manual that in order to receive a return of the money paid for same they would be required to make formal application for admission to the United States Air Corps Training School and be formally denied admission thereto, and that their application for refund must be accompanied by said formal rejection. The said form letter did not disclose the qualifications necessary to entitle an applicant to be received in the said Training School. The requirements of the United States Air Service are such that only those who are exceptionally well qualified educationally, physically and otherwise have any chance of gaining admission thereto. Many purchasers of said respondent's aviation manual, upon being advised as to said requirements, never apply for admission to said school and therefore did not and could not secure the return of the purchase price paid for said aviation manual.

PAR. 8. The false and misleading representations hereinbefore referred to which were made by respondent, William J. Cressy, had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that such representations were true, and as a result, they purchased substantial quantities of said respondent's aviation manuals.

PAR. 9. As a result of the false and misleading representations made by respondent, William J. Cressy, hereinbefore set forth, a substantial amount of trade was diverted to said respondent from his competitors who did not make such false or misleading representations respecting the courses of instructions in flying and books, pamphlets, and other information pertaining to aeronautics, sold and distributed by them.

CONCLUSION

The practices of the respondent, William J. Cressy, as set forth in the foregoing findings as to the facts, were to the prejudice of the public and of said respondent's competitors and constitute unfair methods of competition in commerce in violation 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, 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 complaint and brief in support of the allegations of the complaint and the Commission having made its findings as to the facts and its conclusion that said respondent William J. Cressy has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William J. Cressy, individually or doing business as Flying Intelligence Service or trading under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a manual of instruction and information or any other literature pertaining to aeronautics in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondent conducts a flying school or has facilities for the training of persons in the field of aviation.

2. Representing that respondent will furnish or procure jobs for students either during the course of training or after completion.

3. Representing that respondent is affiliated with or is sponsored by the United States Air Corps or is in any way connected with the United States Air Corps.

4. Representing that purchasers of respondent's aviation manual will receive training by the United States Air Corps.

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.

It is further ordered, That the complaint herein, insofar as it applies to Mrs. Effie Robertson, be, and the same hereby is, dismissed.

IN THE MATTER OF

R. O. MURPHY, TRADING AS THE STILLWATER COMPANY

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

Docket 3608. Complaint, Sept. 27, 1938—Decision, June 7, 1939

Where an individual engaged in the manufacture, sale, and distribution of certain medicinal preparations which consisted, as designated, of three different nose sprays, an eye medicine, and a nose salve, and were referred to by him as a "treatment" and, and as thus engaged in selling to purchasers in various other States and in the District of Columbia his said treatment, in substantial competition with others engaged in sale and distribution of other preparations designed and intended for use in treatment of ailments and conditions for which he recommended his said preparations and including many who do not in any manner misrepresent their products or the therapeutic properties thereof and do not make any other false statements in connection with their sale and distribution; in certain advertisements which he caused to be disseminated in commerce through newspapers, periodicals, and other publications circulating through the various States, and through bulletins, circulars, and letters distributed through the mails and otherwise in commerce among prospective purchasers—

(*a*) Represented that hay fever resulted from the effect of pollens and the like upon over-sensitive or unhealthy condition of the nasal membranes and that his said preparations possessed therapeutics properties which would heal, toughen, and render less sensitive such membranes and build tissues therein and constituted a remedy and competent treatment for hay fever and would avert the same and fortify the user against such ailment and afford complete relief, facts being said ailment or condition is not attributable to the nasal membranes as above set forth, cannot be successfully treated or cured and cause removed by local medication, his said preparations do not possess therapeutic properties of value in building up such membranes or tissues nor in rendering them less sensitive, and his theories as to treatment or method of averting such affliction by local application are not in accordance with consensus of present day medical opinion and use of his said preparations will not cure, avert, nor fortify the user against such condition nor, in all cases, afford complete relief nor cause subsequent attacks to be less severe or confer any permanent substantial benefit;

(*b*) Represented that his said preparations constituted also cure or remedy for asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat and that use of his said nose salve caused the effect of the use of spray to be retained for several hours and that use of his eye medicine caused the pollens to be eliminated by natural secretions of the eye through tear ducts, facts being his said preparations have no substantial value in the treatment of asthma, bronchitis, and other ailments and conditions mentioned, except insofar as they might be palliatives

therefor, said nose salve is only partially effective in retaining effect of use of various sprays, though possibly affording partial or temporary protection against pollens, and his said eye medicine would not result in elimination of pollens as above set forth, and effect of treatment as a whole is limited to temporary relief from acute symptoms of hay fever, due to presence of astringents and anesthetics; and

(*c*) Represented that the price of $5 for his said treatment was a reduction from the price at which it was regularly and customarily offered for sale and sold at retail, facts being said price was its usual and customary one, regularly charged therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true and, as consequence, into purchasing substantial quantities of his said drug and of thereby diverting unfairly trade to himself from his competitors engaged in sale and distribution of preparations designed and intended for and used in treatment of ailments and conditions for which he recommended use of his said products:

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

Mr. Randolph W. Branch for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that R. O. Murphy, individually and trading as The Stillwater Co., hereinafter referred to as respondent, has violated the provisions of the 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, R. O. Murphy, is an individual trading as The Stillwater Co., and having his office and principal place of business in the city of Stillwater, State of Minnesota.

PAR. 2. The respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing certain medicinal or pharmaceutical preparations designated as follows: (1) "No. 1 Nose Spray"; (2) "No. 2 Nose Spray"; (3) "No. 3 Nose Spray"; (4) "Eye Medicine"; (5) "Nose Salve."

The said preparations constitute what is referred to by the respondent as the "treatment." Respondent sells said preparations to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said preparations, when sold by him, to be transported from his aforesaid

place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other individuals and with corporations, firms, and partnerships selling and distributing medicinal and other preparations and products designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of his said preparations. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said preparations, respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparations and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers, magazines, and other publications having a circulation throughout the various States of the United States, through bulletins, circulars, and letters distributed among prospective purchasers of said preparations and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

My belief is that hay-fever is not a disease at all, but usually the result of the nose membranes being oversensitive and weak, and that when they are in this condition the pollens irritate them excessively.

After using it several times a day, during the spring and summer, these membranes will be built up and strengthened, and will have a firm, hard surface which will throw off the hay-fever pollens with little or no irritation; the air passages will then remain open and the suffering from hay-fever should be avoided.

All that is necessary is to build up and toughen the nose membranes a little so that they will not be sensitive to pollen. The whole thing then disappears; regardless of what particular pollens you are sensitive to.

Here is a scientific treatment for hay-fever which has been thoroughly tested and has proven successful.

Simply spray the nose with it several times a day and let it heal and build up the nose membranes.

I have found a medicine which has a tendency to toughen the nose membranes and make them less sensitive.

I do not claim that this treatment is anything miraculous, but it is certainly a splendid, effective relief for hay-fever.

I have been freed of hay-fever suffering for more than twelve years now by the use of this medicine and since that time I have had the satisfaction of seeing many another sufferer come up the same path by the use of this medicine which I believe to be the absolute specific for the conditions that cause hay-fever.

By the use of this medicine you are completely fortified against the attack of hay-fever.

The reason that this treatment will relieve hay-fever where others fail is this:

Moreover, if my treatment is continued for several seasons, the attacks seem to gradually grow lighter.

Our medicine is not compounded in oil and contains only a few ingredients, all of which are quickly and entirely absorbed leaving the nose and throat in a healthy condition.

Although our medicine is primarily a treatment for hay-fever, it is also beneficial for afflictions of the nose and throat * * * It has given complete relief from bronchitis, head colds, asthma, and uncontrollable coughing spells.

The Nose Salve, which our treatment also includes, gives you additional comfort and a lasting relief when the hay-fever season is on, and our eye medicine prevents itching of the eyes in a perfectly natural and harmless manner, simply by opening the tear ducts and allowing the natural secretions of the eyes to carry off the pollen.

I set about perfecting a nose salve that would hold the effects of the nose spray in the nostrils for several hours.

This complete treatment formerly sold for $7.50 but right now we are making a special price of $5.00 to secure as many new customers as possible.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparations and their effectiveness in the treatment of the ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that hay fever is not a disease but results from the effect of pollens and the like upon organic conditions of sickness, abnormality, over-sensitiveness, or unhealthiness of the nasal membranes; that hay fever may be prevented, cured, and the sufferers therefrom substantially relieved by building up, healing, toughening, and strengthening the membranes of the nose; that respondent's treatment is scientific and has been thoroughly tested and proven successful; that the use of said treatment will heal and strengthen, build up and toughen and render less sensitive the nasal membranes and will build tissues therein, thus enabling the nose to throw off the pollens which induce hay fever; that from the use of said treatment,

there is obtained complete comfort, splendid relief, successful and marked results and an escape from the suffering incident to hay fever; that said treatment is a competent and effective remedy or treatment for hay fever and will completely fortify the user against hay fever; that the use of such treatment will assure substantial benefit to the user thereof; that the use of such treatment will bring relief to sufferers from hay fever where the use of treatments sold and distributed by competitors of respondent will fail to bring such relief; that as a result of the use of such treatment, the yearly attacks of hay fever on the user thereof will gradually become less severe; that the said preparations are not compounded in oil; that all of the ingredients of the various preparations are absorbed in the human system; that such treatment is a competent and effective remedy or treatment for, or will cure, asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat; that the use of the said nose salve causes the effect of the use of the said spray to be retained for several hours; that the use of the said eye medicine causes the pollens to be eliminated by the natural secretions of the eye through the tear ducts; that the price of $5 for such treatment is a reduction from the price at which the treatment is regularly and customarily offered for sale, and sold, at retail.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact, the condition of hay fever is not attributable to sick or unhealthy local conditions of the nasal membranes and hay fever cannot be successfully treated and cured, and the cause thereof removed, by local medication. The said preparations, used singly or in combination, have no substantial therapeutic value in building up the membranes or tissues in the nose nor in strengthening, toughening, or rendering less sensitive the nasal membranes. The theories as to the proper treatment of hay fever as set forth in the aforesaid statements and representations by the respondent are not in accordance with the consensus of present day medical opinion. The use of said preparations will not cure and have no substantial therapeutic value in the treatment of hay fever, nor will they free the user from the suffering incident thereto. The use of such preparations will not render subsequent attacks of hay fever less severe and no permanent substantial beneficial results will be obtained, nor will any beneficial results be assured, from the use thereof. The use of such preparations do not always bring relief to the sufferers from hay fever when the use of preparations sold by competitors of the respondents failed to bring such relief. Various of the ingredients

contained in such preparations are not absorbed into the human system if such preparations are used according to the directions of the respondent. The preparation designated "Nose Salve" contains a substantial amount of petrolatum. Such preparations, used either singly or in combination, will not cure and have no substantial therapeutic value in the treatment of asthma, bronchitis, catarrh, coughs, colds, and other afflictions of the nose and throat. The use of the said nose salve is only partially effective in retaining the effect of the use of the said spray. The use of the said eye medicine will not result in the elimination of pollens through the natural secretions of the eyes. The treatment is regularly and customarily offered for sale, and sold, by the respondent at retail for the price of $5.

Respondent's claims as to the therapeutic value or efficacy of said preparations are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the therapeutic value and efficacy of said preparations which might truthfully be made. Any effect which the said preparations may have, when used either singly or in combination, is limited to a temporary relief from the acute symptoms of hay fever.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations, 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparations possess the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparations.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. 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 and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of

respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 27th day of September 1938, issued and served its complaint in this proceeding upon said respondent, R. O. Murphy, individually and trading as The Stillwater Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 10, 1938, the respondent filed his 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 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 fact 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. Thereafter, this proceeding regularly came on for the final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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, R. O. Murphy, is an individual doing business under the name and style of The Stillwater Co., with his office and principal place of business in the city of Stillwater, State of Minnesota. Respondent is now and has been for more than 3 years last past engaged in the business of manufacturing, selling, and distributing certain medicinal preparations. The said preparations are designated as (1) "No. 1 Nose Spray"; (2) "No. 2 Nose Spray"; (3) "No. 3 Nose Spray"; (4) "Eye Medicine"; (5) "Nose Salve." Said preparations constitute what is referred to by the

respondent as the "treatment." In the course and conduct of his business respondent causes said preparations when sold to be transported from his aforesaid place of business in the State of Minnesota to purchasers thereof located in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 2. The "No. 1 Nose Spray" is a saturated solution of pine tar in pure water. The "No. 2 Nose Spray" is a 1 percent solution of borocaine dissolved in a saturated solution of pine tar in pure water. The "No. 3 Nose Spray" is one-half of 1 percent ephedrine sulphate and 1½ percent borocaine dissolved in water. The "Eye Medicine" is 20 percent of a 1:1000 solution of adrenalin chloride in 80 percent normal salt solution. The "Nose Salve" is 1 percent menthol, 10 percent Kelo-Form (a synthetic anesthetic), 10 percent petrolatum, and 79 percent lanolin.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and has been for more than 3 years last past, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of other preparations, designed and intended for and used in the treatment of the ailments and conditions of the human body for which respondent recommends the use of his said preparations, in commerce between and among the various States of the United States. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution thereof.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of said preparations, respondent has caused certain advertisements to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers, magazines, and other publications having a circulation throughout the various States of the United States and through bulletins, circulars, and letters distributed by means of the United States mails and otherwise in commerce, among prospective purchasers of said preparations.

PAR. 5. Through said advertisements, bulletins, letters, and circulars respondent has made representations with respect to the cause of hay fever, the therapeutic properties of said preparations and

the results that may be expected to be obtained from the use thereof, such as the following:

My belief is that hay fever is not a disease at all, but usually the result of the nose membranes being oversensitive and weak, and that when they are in this condition the pollens irritate them excessively.

After using it several times a day, during the spring and summer, these membrances will be built up and strengthened, and will have a firm, hard surface which will throw off the hay-fever pollens with little or no irritation; the air passages will then remain open and the suffering from hay fever should be avoided.

All that is necessary is to build up and toughen the nose membranes a little so that they will not be sensitive to pollen. The whole thing then disappears regardless of what particular pollens you are sensitive to.

Here is a scientific treatment for hay fever which has been thoroughly tested and has proven successful.

Simply spray the nose with it several times a day and let it heal and build up the nose membranes.

I have found a medicine which has a tendency to toughen the nose membranes and make them less sensitive.

I do not claim that this treatment is anything miraculous, but it is certainly a splendid, effective relief for hay fever.

I have been freed of hay fever suffering for more than twelve years now by the use of this medicine and since that time I have had the satisfaction of seeing many another sufferer come up the same path by the use of this medicine which I believe to be the absolute specific for the conditions that cause hay fever.

By the use of this medicine you are completely fortified against the attack of hay fever.

The reason that this treatment will relieve hay fever where others fail is this:

Moreover, if my treatment is continued for several seasons, the attacks seem to gradually grow lighter.

Our medicine is not compounded in oil and contains only a few ingredients, all of which are quickly and entirely absorbed leaving the nose and throat in a healthy condition.

Although our medicine is primarily a treatment for hay fever, it is also beneficial for afflictions of the nose and throat * * * It has given complete relief from bronchitis, head colds, asthma, and uncontrollable coughing spells.

The Nose Salve, which our treatment also includes, gives you additional comfort and a lasting relief when the hay fever season is on, and our eye medicine prevents itching of the eyes in a perfectly natural and harmless manner, simply by opening the tear ducts and allowing the natural secretions of the eyes to carry off the pollen.

I set about perfecting a nose salve that would hold the effects of the nose spray in the nostrils for several hours.

This complete treatment formerly sold for $7.50 but right now we are making a special price of $5.00 to secure as many new customers as possible.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparations and their

effectiveness in the treatment of the ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that hay fever is not a disease but results from the effect of pollens and the like upon organic conditions of sickness, abnormality, oversensitiveness or unhealthiness of the nasal membranes; that hay fever may be prevented, cured, and the sufferers therefrom substantially relieved by building up, healing, toughening, and strengthening the membranes of the nose; that respondent's treatment is scientific and has been thoroughly tested and proven successful; that the use of said treatment will heal and strengthen, build up, and toughen and render less sensitive the nasal membranes and will build tissues therein, thus enabling the nose to throw off the pollens which induce hay fever; that from the use of said treatment, there is obtained complete comfort, splendid relief, successful and marked results and an escape from the suffering incident to hay fever; that said treatment is a competent and effective remedy or treatment for hay fever and will completely fortify the user against hay fever; that the use of such treatment will assure substantial benefit to the user thereof; that the use of such treatment will bring relief to sufferers from hay fever where the use of treatments sold and distributed by competitors of respondent will fail to bring such relief; that as a result of the use of such treatment, the yearly attacks of hay fever on the user thereof will gradually become less severe; that the said preparations are not compounded in oil; that all of the ingredients of the various preparations are absorbed in the human system; that such treatment is a competent and effective remedy or treatment for, or will cure, asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat; that the use of the said nose salve causes the effect of the use of the said spray to be retained for several hours; that the use of the said eye medicine causes the pollens to be eliminated by the natural secretions of the eye through the tear ducts; that the price of $5 for such treatment is a reduction from the price at which the treatment is regularly and customarily offered for sale, and sold, at retail.

PAR. 7. The representations made by respondent and used and disseminated by respondent in the manner described with respect to his said preparations are exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact, hay fever is not attributable to oversensitive, weak, or unhealthy local conditions of the nasal membranes and their consequent susceptibility to excessive irritation from pollens, and cannot be successfully treated and cured, or the cause removed, by local medication. Respondent's preparations, used singly or in combination, do not possess therapeutic properties of value in building up the membranes or tissues of the nose, nor in healing,

strengthening, toughening, or rendering less sensitive the nasal membranes. Respondent's theories as to the treatment of or method of averting hay fever by local applications to the membrances of the nose are not in accordance with the consensus of present-day medical opinion. The use of these preparations will not cure, avert, nor fortify the user against hay fever, nor in all cases afford complete relief. The use of the preparations will not render subsequent attacks of hay fever less severe, and no permanent, substantial beneficial results will be obtained therefrom. Certain of the ingredients are not absorbed into the system when used in accordance with respondent's directions. The preparations, used either singly or in combination, are not cures for, and have no substantial value in the treatment of, asthma, bronchitis, catarrh, coughs, colds, and other afflictions of the nose and throat, except insofar as they may be palliatives for these conditions.

The "Nose Salve" is only partially effective in retaining the effect of the use of the various sprays. The "Eye Medicine" will not result in the elimination of pollens through the natural secretions of the eyes. The effect of the treatment as a whole is limited to a temporary relief from the acute symptoms of hay fever due to the presence of astringents and anesthetics. The "Nose Salve" may afford a partial and temporary protection against pollens.

PAR. 8. The use by respondent of the foregoing exaggerated, misleading, and untrue statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the said representations and statements are true, and, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's drugs.

As a result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to the respondent from his competitors engaged in the business of selling and distributing preparations designed and intended for, and used in the treatment of, the ailments and conditions of the human body for which respondent recommends the use of his preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, R. O. Murphy, individually and trading as The Stillwater Co., are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said 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 a stipulation as to the 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, R. O. Murphy, individually and trading as The Stillwater Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of United States mails, or in commerce as "commerce" is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of certain medicines now designated by the names of "No. 1 Nose Spray," "No. 2 Nose Spray," "No. 3 Nose Spray," "Eye Medicine," and "Nose Salve," or any other medicines composed of similar ingredients or possessing substantially similar therapeutic properties, whether sold under those designations or any other designations, which advertisements represent, directly or through implication:

(*a*) That hay fever results from the effect of pollens and the like upon oversensitive or unhealthy conditions of the nasal membranes, and that respondents preparations, either singly or in combination, possess therapeutic properties which will heal, toughen, strengthen, or render less sensitive the nasal membrance, or build tissues therein.

(*b*) That respondent's preparations constitute a cure or remedy, or competent treatment, for hay fever or will avert hay fever, or will fortify the user against hay fever, or will afford complete relief for hay fever in all cases, or have any therapeutic value in the treatment of hay fever in excess of furnishing a temporary or palliative relief from the acute symptoms thereof.

(*c*) That respondent's preparations are a cure or remedy for asthma, bronchitis, coughs, colds, or other afflictions of the nose or throat, or have any substantial value in the treatment thereof except

insofar as they may furnish temporary or palliative relief for such conditions

(*d*) That the use of respondent's preparations will cause subsequent attacks of hay fever to be less severe, or that any permanent substantial beneficial results will be obtained therefrom.

(*e*) That respondent's "Eye Medicine" will cause pollens to be eliminated from the system through the natural secretions of the eye.

(*f*) That respondent's preparations are offered at a special or reduced retail price when such price is the usual and customary price regularly charged by respondent for said preparations.

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

ROBERT R. CHARNEY, DOING BUSINESS AS NATIONAL SALES COMPANY AND WINDSOR 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 3610. Complaint, Nov. 22, 1938[1]*—Decision, June 8, 1939*

Where an individual engaged in sale and distribution of fountain pens, pencils, and jewelry such as necklaces and rings; in advertising his pens and pencils and necklaces for sale, along with so-called certificates—

(*a*) Represented that the customary and usual retail prices at which said various articles were offered and sold were greatly in excess of the prices at which they were offered and sold under terms and conditions set out in advertisements in question, and that the certificates referred to in said advertisements were actually worth $4.41 each when offered as part payment of purchase price of such various articles, through such statements, among others, as "THIS CERTIFICATE IS WORTH $4.41" and "This certificate and 59c entitles the bearer to one of our Genuine Indestructible $5.00 Vacuum Filler Sackless Fountain Pens * * *," and "Price After Sale $5.00," and "* * * $1.50 PENCILS TO MATCH ABOVE PEN, 26c," and similarly referred to and offered, for 59 cents plus the certificate of said alleged worth of $4.41, its "GENUINE FULL CARAT FACSIMILE DIAMOND RINGS" or its "Regular $5.00 CROSS NECKLACES in Plain Gold, Silver or Beautiful Facsimile DIAMONDS", and similarly set forth that price of necklaces would be $5 after the sale, and that there was a limit of two to a coupon and limited supply, and offer was made possible by the manufacturer, facts being said pens and pencils were generally offered and sold for 59 cents and 26 cents each, respectively, and did not have any such value as attributed to them as aforesaid, and rings and necklaces were customarily sold for former figure, and certificates in question did not have value of $4.41, or any value whatever;

(*b*) Represented that fountain pens sold and distributed by him as above set forth would last a lifetime and never need repair, and had greater ink capacity than ordinary pens, and that the points thereof were made from sensational or new material known as "Durium," and were of a design materially different from other pen points, through such statements, among others, as "A LIFETIME GUARANTEE WITH EACH PEN", "Genuine Indestructible", and "* * * holds 200% more ink than any ordinary fountain pen on the market," and "You can write for 3 months with one filling!" "No repair bills!" etc., and, through form letters distributed, that pen points used therein were the "latest design points," made from "Durium, a sensational new material," facts being said pens were not superior to competitive products offered at approximately same price, and other statements as to their capacity, long life, freedom from need of repair, and points of sensational new material and materially different design from other pen points, were untrue; and

[1] Amended and supplemental.

(c) Represented that his said rings or necklaces were set with diamonds and could be worn a lifetime and would remain free from tarnish, discoloration, loss of brilliancy or loss of stones, and that they were 14K gold or silver through various statements to such effect, facts being they were not set with diamonds, could not be worn a lifetime or any appreciable period and remain free from tarnish, etc., or loss of stones, and were not 14K gold or silver;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and of causing portion of purchasing public, because of such mistaken belief, to purchase substantial quantities of his said products, and of thereby unfairly diverting trade to himself from competitors engaged in sale and distribution of similar products in commerce among the various States and in the District of Columbia, and who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which offered and sold:

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

Mr. DeWitt T. Puckett, for the Commission.

Mr. Edward I. Baker, of Atlantic City, N. J., for respondent.

Amended and Supplemental Complaint

Whereas, Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having had reason to believe that Robert R. Charney, an individual, doing business as National Sales Co. and as Windsor Pen Co., hereinafter referred to as respondent, had violated the provisions of the said act, and it having appeared to the Commission that a proceeding by it in respect thereof was in the public interest, did issue its complaint against the respondent herein on September 28, 1938, charging him with violation of said act; and

Whereas, This Commission having reason to believe that the respondent herein has violated the provisions of the aforesaid act by acts and practices other than and in addition to those described in said complaint, and it appearing to the Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, 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 hereby issues this its amended and supplemental complaint stating its charges in that respect as follows:

Paragraph 1. The respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co. at

1315 Atlantic Avenue, Atlantic City, N. J., is now, and for more than 1 year last past has been engaged in the sale and distribution of fountain pens, pencils, and jewelry, such as necklaces and rings.

Respondent now causes, and for more than 1 year last past has caused, his said fountain pens, pencils, necklaces, and rings, when sold by him, to be shipped from his said place of business in Atlantic City, N. J., to the purchasers thereof, located in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said fountain pens, pencils, necklaces, and rings so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business as aforesaid, the respondent has been, and is now, in substantial competition with other individuals and with corporations and partnerships also engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings 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 said business, and for the purpose of inducing the purchase of his fountain pens, pencils, necklaces, and rings, the respondent has caused, and still causes, false advertisements, containing representations and claims with respect to the retail values or prices at which said pens, pencils, necklaces, and rings are actually offered for sale and sold, to be circulated in newspapers having a circulation among and between the various States of the United States. Said advertisements also contain misrepresentations as to other characteristics and qualities of said products. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

59¢—THIS CERTIFICATE IS WORTH $4.41—59¢

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible $5.00 Vacuum Filler Sackless Fountain Pens. Visible Ink Supply. You See the Ink!

A LIFETIME GUARANTEE WITH EACH PEN

Limit—2 Sets to Certificate	(Picture of pen)	Price After Sale $5.00

THE NEW PLUNGER FILLER—ZIP—ONE PULL AND IT'S FULL

This Pen holds 200% more ink than any ordinary fountain pen on the market! You can write for 3 months with one filling! No repair bills! No

lever filler! No pressure bar! Every Pen tested and guaranteed to be unbreakable for life! GET YOURS NOW! This PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This certificate good only while advertising sale is on.

ALSO $1.50 PENCILS TO MATCH ABOVE PEN, 26¢

Form letters distributed by the respondent, as aforesaid, contain the statements that the pen points used in said pens are the "latest design points," manufactured from "Durium, a sensational new material."

59¢ TWO DAYS ONLY 59¢

THIS CERTIFICATE IS WORTH
$4.41

This certificate and 59¢ entitles bearer to one of our GENUINE FULL CARAT FACSIMILE

DIAMOND RINGS

LIFETIME GUARANTEE

* * * These rings are guaranteed against discoloration and tarnish for a lifetime.

THIS CERTIFICATE IS WORTH $4.41

This Coupon and Only 59¢ entitles bearer to one of our Regular $5.00

CROSS NECKLACES

in Plain Gold, Silver or Beautiful Facsimile

DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular $5.00 Cross Necklaces. You save exactly $4.41. The fad has taken the country by storm and due to the great demand, only a limited number of Cross Necklaces could be obtained. Come early for best selection.

NEW STREAMLINE DESIGNS

These beautiful Cross Necklaces are the new fashion sensation, now being worn morning, afternoon and evening. Variety of styles for women and girls in plain or fancy designs, complete with chain.

LIFE-TIME GUARANTEE

Unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or in any other form.

LIMIT 2 TO A COUPON

This offer made possible by the manufacturer. Limited supply for this special sale. This coupon is good only while advertising sale is on.

CHOICE OF 14K GOLD OR SILVER

This is an introductory offer, and the Cross Necklaces will be $5.00 after this sale.

Through such statements, and others similar thereto but not herein set out, respondent, represents that the customary and usual retail prices at which said pens, pencils, rings, and necklaces are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate referred to is actually worth $4.41 when offered as part payment of the purchase price of said fountain pens, necklaces, and rings; that said pens usually and customarily sell at retail for $5 each and will last a lifetime; that they hold 200 percent more ink than any ordinary fountain pen on the market; that said pens never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points. Respondent represents further that his rings are set with diamonds and are guaranteed against discoloration and tarnish for a lifetime; that various necklaces are composed of 14K gold and others are composed of silver, some of which are set with diamonds, and that the necklaces are guaranteed for a lifetime against tarnishing, loss of brilliancy, and loss of stones.

PAR. 3. In truth and in fact the respondent's pens and pencils are not customarily or usually offered for sale and sold for $5 and $1.50 each, respectively, but the pens are customarily and generally offered for sale and sold for 59 cents each and the pencils are offered for sale and sold for 26 cents each. The certificate referred to in said advertising does not have the value of $4.41 or any value whatever, as said pens and pencils are intended to be, and are, sold in the usual course of trade with or without the certificate at the aforesaid price of 59 cents and 26 cents, respectively. Said pens are not superior to competitive pens offered for sale at approximately the same amount for which respondent's pens are sold. The statements that said pens hold 200 percent more ink than any ordinary fountain pen on the market; that they last a lifetime; that they never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points, are untrue. None of respondent's said rings or necklaces are set with diamonds nor can they be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy, or loss of stones. Said necklaces are not 14K gold or silver.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which their said products are offered for sale and sold.

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 and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said products as the result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from his aforesaid competitors. In consequence thereof 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.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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, 1938, issued and served its amended and supplemental complaint in this proceeding upon respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 13, 1938, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said amended and supplemental complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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. The respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co. at 1315 Atlantic Avenue, Atlantic City, N. J., is now, and for more than 1 year last past has been engaged in the sale and distribution of fountain pens, pencils, and jewelry, such as necklaces and rings.

Respondent now causes, and for more than 1 year last past has caused, his said fountain pens, pencils, necklaces, and rings, when sold by him, to be shipped from his said place of business in Atlantic City, N. J., to the purchasers thereof, located in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said fountain pens, pencils, necklaces, and rings so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business as aforesaid, the respondent has been, and is now, in substantial competition with other individuals and with corporations and partnerships also engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings 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 said business, and for the purpose of inducing the purchase of his fountain pens, pencils, necklaces, and rings, the respondent has caused, and still causes, false advertisements, containing representations and claims with respect to the retail values or prices at which said pens, pencils, necklaces, and rings are actually offered for sale and sold, to be circulated in newspapers having a circulation among and between the various States of the United States. Said advertisements also contain misrepresentations as to other characteristics and qualities of said products. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

59¢—THIS CERTIFICATE IS WORTH $4.41—59¢

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible $5.00 Vacuum Filler Sackless Fountain Pens. Visible Ink Supply. You See the Ink!

A LIFETIME GUARANTEE WITH EACH PEN

Limit—2 Sets to Certificate	(Picture of pen)	Price After Sale $5.00

THE NEW PLUNGER FILLER—ZIP—ONE PULL AND IT'S FULL

This PEN holds 200% more ink than any ordinary fountain pen on the market! You can write for 3 months with one filling! No repair bills! No lever filler! No pressure bar! Every pen tested and guaranteed to be unbreakable for life! GET YOURS NOW! THIS PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This certificate good only while advertising sale is on.

ALSO $1.50 PENCILS TO MATCH ABOVE PEN, 26¢.

Form letters distributed by the respondent, as aforesaid, contain the statements that the pen points used in said pens are the "latest design points," manufactured from "Durium, a sensational new material."

59¢ TWO DAYS ONLY 59¢

THIS CERTIFICATE IS WORTH

$4.41

This certificate and 59¢ entitles bearer to one of our GENUINE FULL CARAT FACSIMILE

DIAMOND RINGS

LIFETIME GUARANTEE

* * * These rings are guaranteed against discoloration and tarnish for a lifetime."

"THIS CERTIFICATE IS WORTH $4.41

This Coupon and Only 59¢ entitles bearer to one of our Regular $5.00

CROSS NECKLACES

in Plain Gold, Silver or Beautiful Facsimile

DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular $5.00 Cross Necklaces. You save exactly $4.41. The fad has taken the country by storm and due to the great demand, only a limited number of Cross Necklaces could be obtained. Come early for best selection.

NEW STREAMLINE DESIGNS

These beautiful Cross Necklaces are the new fashion sensation, now being worn morning, afternoon and evening. Variety of styles for women and girls in plain or fancy designs, complete with chain.

LIFE-TIME GUARANTEE

Unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or in any other form.

LIMIT 2 TO A COUPON

This offer made possible by the manufacturer. Limited supply for this special sale. This coupon is good only while advertising sale is on.

CHOICE OF 14K GOLD OR SILVER

This is an introductory offer, and the Cross Necklaces will be $5.00 after this sale.

Through such statements, and other similar thereto but not herein set out, respondent represents that the customary and usual retail prices at which said pens, pencils, rings, and necklaces are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate referred to is actually worth $4.41 when offered as part payment of the purchase price of said fountain pens, necklaces, and rings; that said pens usually and customarily sell at retail for $5 each and will last a lifetime; that they hold 200 percent more ink than any ordinary fountain pen on the market; that said pens never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points. Respondent represents further that his rings are set with diamonds and are guaranteed against discoloration and tarnish for a lifetime; that various necklaces are composed of 14K gold and others are composed of silver, some of which are set with diamonds, and that the necklaces are guaranteed for a lifetime against tarnishing, loss of brilliancy, and loss of stones.

PAR. 3. In truth and in fact the respondent's pens and pencils are not customarily or usually offered for sale and sold for $5 and $1.50 each, respectively, but the pens are customarily and generally offered for sale and sold for 59 cents each and the pencils are offered for sale and sold for 26 cents each. The certificate referred to in said advertising does not have the value of $4.41 or any value whatever, as said pens and pencils are intended to be, and are, sold in the usual course of trade with or without the certificate at the aforesaid price of 59 cents and 26 cents, respectively, and the rings and necklaces are customarily sold for 59 cents each. Said pens are not superior to competitive pens offered for sale at approximately the same amount for which respondent's pens are sold. The statements that said pens hold 200 percent more ink than any ordinary fountain pen on the market; that they last a lifetime; that they never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points, are untrue. None of respondent's said rings or necklaces are set with diamonds nor can they be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy, or loss of stones. Said necklaces are not 14K gold or silver.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which their said products are offered for sale and sold.

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 and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and causes a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said products. As a result trade has been diverted unfairly to respondent from his aforesaid competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co., as herein found, are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said amended and supplemental complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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 Robert R. Charney individually and doing business as National Sales Co. and Windsor Pen Co. or trading under any other name, his agents, his employees and representatives directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fountain pens, pencils, necklaces, and rings or other products in commerce, as

commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing as the customary or regular prices or values for respondent's products, prices, and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

2. Representing that any articles of merchandise customarily and regularly sold in connection with the use of any purported certificate or other similar device have any value in excess of the actual money price required to be paid.

3. Representing that any coupon or similar device has any monetary value in the purchase of an article which is customarily or regularly sold by the respondent with or without such coupon or similar device at the price required to be paid.

4. Representing that the various products sold and distributed by the respondent are of a character and quality different from and superior to other similar products of comparable price.

5. Representing that the fountain pens sold and distributed by the respondent will last a lifetime, will never need repair or that they have a greater ink capacity than ordinary fountain pens.

6. Representing that the points of the fountain pens sold and distributed by the respondent are manufactured from a sensational or new material known as "Durium" or any similar name, or that they are of a design materially different from other pen points, when such is not the fact.

7. Representing that respondent's rings or necklaces are set with diamonds or that they can be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy or loss of stones.

8. Representing that the rings and necklaces sold and distributed by the respondent are 14K gold or silver or that they contain any substantial amount of gold or silver 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.

IN THE MATTER OF

LINCOLN LOCKER CORPORATION

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

Docket 3345. Complaint, Mar. 3, 1938—Decision, June 13, 1939

Where a corporation engaged in sale, distribution and installation of certain cold storage lockers which were purchased by it from manufacturers under special arrangement and distributed through jobbers and also direct to ultimate user, and consisted of separate compartments, individually locked, for installation in cold storage warehouses and leasing to individual patrons for use in storing and preserving perishable food stuffs so as to permit withdrawal as required; in advertising its said product through periodicals, circulars, advertising booklets, brochures, and leaflets—

(*a*) Represented that said lockers were made or built of copper alloy galvanized sheet metal, and rustproof copper alloy steel, and that the box panels were fabricated of 22 gage copper alloy sheets, facts being said products were made of galvanized sheet steel, and contained none of the little more rust-resistant, but preferred, copper or copper alloy metal, and were not built of copper alloy galvanized sheet metal or rustproof copper alloy steel or copper alloy sheet steel, as set forth in advertisements thereof;

(*b*) Represented that each box would hold from 300 to 400 pounds of meat or other produce, facts being that most popular sized locker, and one which it sold largest quantity of, representing from 50 to 75 percent of its total sales, was medium size, with maximum storage capacity of not more than 225 pounds of meat or other produce, two other sizes sold by it had still smaller maximum capacity, it never advertised or sold any of largest size or pictured any of next largest, and lockers customarily sold by it would not, as represented, hold from 300 to 400 pounds, as above set forth; and

(*c*) Represented that locks for its said products were available in three types, namely, five-disc tumbler locks and padlocks, in which types key changes were practically unlimited, facts being 75 percent of lockers sold by it were equipped with five-disc tumbler locks having, in majority of cases, only 100 possible key changes, with consequent possibility of loss by theft in cold storage installations where there are more than 100 lockers equipped with such locks, and such key changes cannot properly be represented as "practically unlimited";

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that all said representations were true, and with effect of causing consuming public, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, to purchase substantial volume of its said lockers, and of thereby diverting trade unfairly from others engaged in sale of like and similar products intended for use in like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

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

Before *Mr. Edward J. Hornibrook*, trial examiner.
Mr. Merle P. Lyon for the Commission.
Mr. F. E. Alstine, of Pocahontas, Ia., 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 Lincoln Locker 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, Lincoln Locker Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at Pocahontas, Iowa. Respondent is now, and for a period of more than 1 year last past has been, engaged in the sale, distribution and installation of cold storage lockers known as "Lincoln Louvred Lockers," in commerce between and among various States of the United States. It causes said products, when sold, to be shipped and transported from its place of business located in the State of Iowa, or from factories located in the States of Nebraska and Illinois, to purchasers thereof located at various points in States of the United States other than the States of Iowa, Nebraska and Illinois. Respondent maintains, and during the times mentioned herein has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States. In the course and conduct of its business, respondent is, and at all times herein referred to has been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of cold storage lockers 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 its business, the respondent, in soliciting the sale of and in selling its Lincoln Louvred Lockers has caused circulars and other advertising booklets, brochures, and leaflets to be issued, published and distributed to customers and pro-

spective customers located in different States of the United States, in which advertising matter said products were represented, designated and referred to by the following statements:

Lincoln Lockers are built of copper alloy galvanized sheet metal * * * Built with rust-proof copper alloy steel * * * Lincoln Locker assemblies are made of copper alloy sheet steel, galvanized throughout.

Each box will hold from three to four hundred pounds of meat or other produce.

Locks for Lincoln Lockers are available in three types—(1) five-disc tumbler locks and (2) padlocks, in which types, key changes are practically unlimited.

PAR. 3. The representations made by respondent, as aforesaid, with respect to the composition and capacity of respondent's cold storage lockers and the number of key changes which may be made in their locks are false, misleading and untrue.

In truth and in fact, said products are not made of or manufactured from copper alloy galvanized sheet metal, but are made of material other than that represented. The capacity of each box is much less than 300 to 400 pounds of meat or other produce, and is not more than 200 to 250 pounds. The five-disc tumbler locks have only 100 key changes and therefore cannot truthfully be said to be practically unlimited as to key changes.

PAR. 4. Each and all of the false, misleading and untrue representations so made by respondent in offering for sale and in selling its "Lincoln Louvred Lockers" 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent, as aforesaid, a number of the consuming public has purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships likewise engaged in the sale of cold storage lockers who truthfully advertise their products. As a result thereof, substantial injury has been and is now being done by the respondent herein 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 the respondent herein have been, and are, all to the prejudice of the public and of respondent's competitors, as aforesaid, and have been, and are unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved, September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 3, 1938, issued and served its complaint in this proceeding upon respondent, Lincoln Locker 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 Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of the complaint by F. E. Van Alstine, attorney for the respondent, before Edward J. Hornibrook, 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 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 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 Lincoln Locker Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at Pocahontas, Iowa. It is now, and for more than 2 years last past has been, engaged in the sale, distribution and installation of cold storage lockers known as "Lincoln Louvred Lockers." These are purchased from manufacturers under special arrangement and are distributed through jobbers and also direct to the ultimate user. The "Lincoln Louvred Lockers" are separate compartments, individually locked and are installed in cold storage warehouses for leasing to individual patrons who use the same for storing and preserving perishable foodstuffs, the facility being that people can store perishable food in these boxes and withdraw it for use as it is required, thus offering facilities of cold storage to a large number of people in that manner.

Par. 2. Respondent causes its products, when sold, to be shipped and transported from its place of business located at Pocahontas, Iowa, or from factories located in Nebraska and Illinois, to the pur-

chasers thereof located at various points in states of the United States other than the States of Iowa, Nebraska, and Illinois.

PAR. 3. In the course and conduct of its business, respondent is, and for more than two years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of cold storage lockers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale of and in selling its said product and for the purpose of creating a demand therefor, now causes, and for more than two years last past has caused, advertisements to be issued, published and circulated to and among the members of the consuming public of the United States through the medium of magazines, circulars, advertising booklets, brochures, and leaflets.

PAR. 5. Respondent makes, and has made to the general public, statements with reference to the alleged value and merit of said product, some of which statements so made and circulated by the respondent are as follows:

Lincoln lockers are built of copper alloy galvanized sheet metal * * * built with rust-proof copper alloy steel * * * Lincoln lockers assemblies are made of copper alloy sheet steel, galvanized throughout.

Each box will hold from 300 to 400 pounds of meat or other produce.

Locks for Lincoln lockers are available in three types—(1) five-disc tumbler locks and (2) padlocks, in which types, key changes are practically unlimited. For smaller installation in which not more than 300 or 400 key changes are required we can obtain a flat key cylinder lock. All locks are master keyed and readily demountable when the box is opened. The locks are sold separate from the box to permit selection by the buyer.

The box panels are fabricated of 22 gauge copper alloy sheet.

PAR. 6. "Lincoln Louvred Lockers" are manufactured of galvanized sheet steel, their doors and bottoms being of 24 gage and the backs and sides being of 26 gage galvanized sheet steel. There is no copper or copper alloy metal whatsoever used in the manufacture or construction of these lockers. There is a public preference for lockers composed of copper or copper alloy steel to lockers composed of galvanized sheet steel, due to widespread beliefs on the part of the general public that copper alloy steel is much better than ordinary galvanized sheet steel. There is in fact, however, very little difference in the two metals so far as rust-resistant qualities are concerned. The respondent's lockers are not built of copper alloy galvanized sheet metal or rust-proof copper alloy steel or copper alloy sheet steel, and the box panels are not fabricated of 22 gage copper alloy sheet.

PAR. 7. "Lincoln Louvred Lockers" are offered to the public in five sizes varying in capacity from 7,680 cubic inches to 14,400 cubic inches inside measurements. The capacity of each size locker is respectively 7,680, 8,640, 9,600, 11,520 and 14,400 cubic inches. Respondent, however, has never advertised or sold any of the largest size having a capacity of 14,400 cubic inches, and, although it has sold some of the next largest size having a capacity of 11,520 cubic inches, it has never pictured any of that size lockers in its advertising literature. The most popular size locker and the one that respondent sells the largest quantity of is the medium size locker having a capacity of 9,600 cubic inches. The sales of this size locker constitute from 50 to 75 percent of respondent's total sales. The dimensions of this locker are 16 by 20 by 30 inches, and it has a maximum storage capacity of not more than 225 pounds of meat or other produce. The two smaller sizes, 7,680 and 8,640 cubic inches, respectively, have a maximum storage capacity of less than 225 pounds of meat or other produce. The lockers customarily sold by respondent will not each hold from 300 to 400 pounds of meat or other produce, as represented by respondent.

PAR. 8. Some of respondent's lockers are sold equipped with locks, and sometimes the purchaser furnishes his own locks. When the lockers are sold equipped with locks, the locks are of three types, padlocks, pin tumbler cylinder locks, and disc tumbler cylinder locks. The lock that is most commonly furnished by respondent is the disc tumbler cylinder lock, which is a built-in lock, actuated by a key lining up the tumblers which are made in the form of little discs, and the insertion of the key rolls the cylinder of the lock from engagement with the barrel to open the lock. This is the type of lock that is advertised by respondent as a "5-disc tumbler lock." Seventy-five percent of the lockers sold by respondent equipped with locks were equipped with this type of lock. The remaining 25 percent of such lockers were equipped with either padlocks or pin tumbler cylinder locks.

The five-disc tumbler locks are of two models, one made by the National Lock Co. of Rockford, Ill., consisting of a master keyed tumbler lock with one hundred key changes, the other made by the Corbin Lock Co. and having 600 key changes. The majority of the five-disc tumbler locks sold by the respondent are of the type which have only 100 possible key changes. In the case of the locks having only 100 possible key changes, there would necessarily be a duplication of locks if more than 100 lockers equipped with such locks were used in any particular cold storage plant or sold to any one customer. In installations in cold storage plants where there are more than 100 lockers equipped with the five-disc tumbler locks having a maximum

of 100 key changes, the duplication of keys results in the possibility of loss by theft. Key changes in such locks cannot properly be represented as "practically unlimited."

PAR. 9. Each and all of the false and misleading claims and representations made by respondent, as aforesaid, by means of advertisements in offering for sale and selling "Lincoln Louvred Lockers" were and are calculated to, and have had and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that all said representations are true.

PAR. 10. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said "Lincoln Louvred Lockers," with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships engaged in the sale of like and similar products intended for use in like and similar purposes, who truthfully advertise their products. As a result 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.

CONCLUSION

The aforesaid acts and practices of the respondent as set forth in the findings as to the facts are all to the prejudice of the public and of the respondent's competitors and constitute unfair methods of competition in commerce in violation 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, testimony and other evidence taken before Edward J. Hornibrook, 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, (no oral arguments having been requested or made), 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, Lincoln Locker Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of cold storage lockers now designated by the name of "Lincoln Louvred Lockers,"

whether sold under that name or under any other name, do forthwith cease and desist, directly or indirectly, from:

1. Representing that said cold storage lockers are made or built of copper or copper alloy galvanized sheet metal or rust-proof copper alloy steel, or 22 gauge copper alloy sheet.

2. Representing that cold storage lockers having a capacity of 9600 cubic inches or less will hold or contain more than 225 pounds of meat or other produce.

3. Representing that each of said cold storage lockers will have a storage capacity greater than its actual capacity.

4. Representing that the key changes for the five-disc tumbler locks on respondent's cold storage lockers are practically unlimited, or larger than the actual possible number of key changes.

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 O. HARR, DOING BUSINESS AS EASTERN TRADING COMPANY

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

Docket 3432. Complaint, May 20, 1938—Decision, June 13, 1939

Where an individual engaged in sale and distribution of incense to purchasers in various other States—

Falsely represented, through printed matter on cartons or containers of his said product and in pamphlets enclosed therewith, that same possessed certain mystical charm, and that lucky numbers which appeared in ashes thereof were key to one's fortune, and might be interpreted through comparing such number with numbers appearing in booklets supplied;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of his said incense as result thereof, and of thereby diverting substantial trade in commerce in question to himself from competitors engaged in sale and distribution of said product in commerce among the States and in the District of Columbia, and who do not misrepresent the qualities, characteristics and attributes of incense offered and sold by them:

Held, That such acts and practices, as above set forth, were all 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. William Schiepan, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Henry O. Harr, an individual, doing business as Eastern Trading Co., hereinafter referred to as respondent, has violated the provisions of the 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 as follows:

PARAGRAPH 1. The respondent, Henry O. Harr, is an individual, doing business as the Eastern Trading Co., at 3974 Vincennes Avenue, Chicago, Ill. He is engaged in the sale and distribution of incense.

Respondent now causes, and for several years last past has caused, his said incense, when sold, to be shipped from his said 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 course of trade in said incense so sold and distributed by the respondent in commerce 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 individuals, and with partnerships and corporations, engaged in the sale and distribution of incense 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 has advertised and now advertises his said incense in trade papers, pamphlets, and in various other ways as follows:

Light the top corner of a triangle "Lucky Number" Incense cake, and bring the subtle charm, the mysterious fragrance and the glamor of the Orient with all its delicate aroma into your home. Stand on long edge, watching both sides till the "Lucky Number" appears in the ashes. This number may be the key to all your Fortunes and Dreams, helping you to get Luck, Love, Happiness and Prosperity.

Lucky Number Incense.

* * * and a mysterious voice rising from the fragrant curling smoke spoke in a wraith-like whisper—"BEHOLD!!! I open to you the portals of the future; look, and heed well, for so shall ye live."

Have your fortune read each morning by burning a cake of Lucky Number Incense, wherein there shall magically appear in the burned white ashes, a number that is the key to your day's fortune. In each box of Lucky Number Incense, there is enclosed a Fortune and Dream Booklet with readings for the future against the corresponding numbers as have become visible in the burned ashes.

PAR. 3. The aforesaid advertising claims serve as representations on the part of respondent to purchasers and prospective purchasers that his said incense possesses certain mystical charms; that lucky numbers appear in the ashes of said incense, which numbers are the key to one's fortune; and that a mysterious voice arises from the smoke emitted from the burning incense.

In truth and in fact, respondent's incense possesses no mysterious charms, and no voice arises from the smoke emitted therefrom. Numbers do not magically appear in the ashes of said incense and such numbers that do appear, if they do, have no value or meaning whatever.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and cor-

porations engaged in the sale and distribution of incense that do not misrepresent the qualities, characteristics, and attributes of the incense which they offer for sale and sell.

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 and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's incense as a result of such erroneous belief. As a result of the acts and practices of the respondent as aforesaid substantial trade in said commerce is diverted unfairly to respondent from his aforesaid competitors, to their injury and to the injury of the public.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of May 1938, issued and served its complaint in this proceeding upon the respondent, Henry O. Harr, an individual doing business as Eastern Trading 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 DeWitt T. Puckett, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it. William Schiepan, attorney for the respondent, introduced no testimony or evidence except he introduced in evidence one of respondent's labels. All of the 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, the testimony and other evidence, brief in support of complaint, no brief having been filed by 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. Respondent, Henry O. Harr, is an individual doing business as Eastern Trading Company, having his principal place of business at 3974 Vincennes Avenue, Chicago, Ill. Respondent has continuously since the year 1928 been engaged in the sale and distribution of incense. In the course and conduct of his business the respondent causes his incense, when sold, to be shipped from his place of business in the city of Chicago, in the State of Illinois, to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in the said incense sold and distributed by him in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and since the year 1928 has been, in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of incense in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's sales of incense average $1,000 a month.

PAR. 4. In the course and conduct of his business the respondent has advertised and now advertises his said incense by means of printed matter appearing on cartons, boxes, or containers in which his said incense is offered for sale and sold and also in pamphlets inclosed in said cartons, boxes or containers. Typical of the representations appearing in such advertising as above described are the following:

Light the top corner of a triangle "Lucky Number" Incense cake, and bring the subtle charm, the mysterious fragrance and the glamour of the Orient, with all its delicate aroma, into your home. Stand on long edge, watching both sides till the "Lucky Number" appears in the ashes. This number may be the Key to all your Fortunes and Dreams, helping you to get Luck, Love, Happiness and Prosperity.

Gradually, in the ashes of the burning incense, a mystic number will appear. The enclosed booklet will help you to understand a meaning of this "Lucky Number."

PAR. 5. Respondent, up to the time of the filing of the complaint in this proceeding, placed in the boxes or containers containing his incense, booklets which purported to tell the fortune of the one burning the incense. This was accomplished by comparing the number appearing in the ashes in the incense with the numbers appearing in the booklet.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, and does now represent, to purchasers and prospective purchasers of his incense that his product possesses certain mystical charm; that lucky numbers appear in the ashes of the said incense which are the key to one's fortune.

PAR. 7. In truth and in fact respondent's incense possesses no mysterious charms and numbers do not magically appear in the ashes of said incense and such numbers that do appear, if they do appear, have no value or meaning whatever.

PAR. 8. There are among the competitors of respondent individuals, partnerships and corporations engaged in the sale and distribution of incense in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent the qualities, characteristics and attributes of the incense which they offer for sale and sell.

PAR. 9. The use by the respondent of the representations hereinabove set forth 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 belief that such representations are true and into the purchase of substantial quantities of respondent's incense as the result of such erroneous belief. As a result of the acts and practices of the respondent, as aforesaid, substantial trade in said commerce is diverted unfairly to respondent from his aforesaid competitors.

CONCLUSION

The acts and practices of the respondent, as herein found, 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 answer of respondent, 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 complaint and in opposition thereto (no brief having been filed by respondent 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Henry O. Harr, individually or doing business as Eastern Trading Company or trading under any other name or through any corporate or other device, his agents, employees, and representatives, in connection with the offering for sale, sale and distribution of incense in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondent's said incense possesses mystical charms.
2. That lucky numbers appear in the ashes of said incense.
3. That numbers which appear in the ashes of said incense are the keys to one's fortune, or have any significance or meaning whatever.

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

LAKE ERIE CHEMICAL COMPANY, DOING BUSINESS AS U. S. ORDNANCE ENGINEERS, INC., AND U. S. ORDNANCE ENGINEERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 2484. Complaint, June 29, 1935—Decision, June 14, 1939

Where two corporations engaged, as case might be and as more fully below set forth, in manufacture, sale, and offer for sale of warfare chemicals, ordnance, munitions, and kindred products, to prospective purchasers and purchasers throughout the several States and the District of Columbia, and in foreign countries, namely—

I. Corporation which was and had been thus engaged for a number of years under name Lake Erie Chemical Co., and which, in the course and conduct of its said business, and as continuously thus engaged in manufacture and sale of warfare chemicals, ordnance, munitions, etc., had from time to time sold such products to the United States Government and had been recipient of information relating to ordnance, munitions, and warfare chemical products, thus, or otherwise disseminated incident to contract bids and to purchase of such materials as the War Department or United States Army purchases from manufacturers from time to time; and

II. Company, which the president of said corporation and others of its managing officials thereafter organized under corporate name U. S. Ordnance Engineers, Inc., and authorized to engage in offer and sale of products of said corporation to prospective purchasers and purchasers in foreign countries and for sale and distribution in export trade from the United States, and voting stock of which was owned, with few exceptions, by those who were also owners of voting stock of said corporation, and which had in common with latter two of its five directors and same president and treasurer, and was located in same city and at same address, had no offices outside of said city, employed New York selling representative on a commission basis with New York office as its exclusive selling representative in South and Central American countries, and who was authorized to and did make use of said company's name, namely, U. S. Ordnance Engineers, Inc., on the door of his offices and in the telephone listing and otherwise, and which, furthermore, as thus organized, was engaged in export business of offering or selling warfare chemicals, ordnance, munitions, and kindred products, made, primarily, by said corporation, to prospective purchasers and purchasers in foreign countries, and also in maintaining and selling certain engineering and construction service for foreign governments, and service involving instruction in military and civil tactics:

In jointly advertising, offering, selling, and exporting in foreign commerce and export trade from the United States to foreign countries, the aforesaid products, and in advertising the same through catalogs which contained 22 separate pages of advertising statements, illustrations, and representations

referring to their products, and which they caused to be made up and circulated and distributed among the prospective foreign customers for such products, including all customers located in foreign countries who had been customers of said corporation first referred to, and including, chiefly, products made by said corporation, and in which catalogs, as made up by them, emphasizing the importance of military experience in the manufacture of such materials as of the utmost importance, and their personnel, equipment, efforts to conform as closely as possible to United States Army specifications and standards, etc., were displayed and set forth—

(1) Name and address of said U. S. Ordnance Engineers, Inc., on the front cover, together with numerous such references as "U. S. ORDNANCE ENGINEERS, Incorporated Successors in Business to the Lake Erie Chemical Company," together with address and cable address and trade mark of said corporation, depicting eagle bearing in his talons aerial projectile and which it employed on its stationery, letterheads, and envelopes;

(2) Matter featuring and depicting officers of such company in their official military dress or uniform of the United States Army, and setting forth, along with statements of their experience and qualifications, their positions in the Reserve Corps; notwithstanding fact established policy and practice of War and Navy Departments is opposed to use in any way of official Government military or naval titles, uniforms, or insignia in connection with promotion of private commercial enterprise by military or naval officers, reserve or otherwise, or by any private individual, and policy and practice of said Departments is to prohibit and prevent use of official military titles, uniforms, or insignia in any way connected therewith, or with Army or Navy, in connection with any commercial or non-Governmental enterprise;

(3) Facsimile reproductions of letters of recommendation referring to said company's aforesaid president and vice president and their standing and military service, over signatures of various generals as Chief of Chemical Warfare Service, Chief of Staff, Army of Occupation, Major General commanding the First Army Corps, and the Chief of the Militia Bureau;

(4) Reduced photographs of 24 checks on the Treasurer of the United States to the order of said corporation, together with statements "SUPPLIERS OF FUZES, CHEMICALS AND GAS PROTECTION EQUIPMENT TO THE UNITED STATES GOVERNMENT" and "Remittances from the United States Government during one month for orders filled";

(5) References, in connection with description of their various products therein offered, to utilization of the experimental, development, and test work and experience of the Ordnance Department and Chemical Warfare Service of the United States Army, and to the vast sums expended on experimental and development work by such branches of the Army, along with statement of strictest possible conformance to Army specifications in order "to take advantage" of such "rich store of experience," notwithstanding fact information incident to such expenditures on experimental and development work is, for the most part, retained in the confidential files of the War Department and not available either to them or their competitors;

(6) Numerous references to Army specifications and standards and said branches of the service in connection with their said products, notwithstanding fact their said products were not "standard," and information,

including plans and specifications supplied for so-called "standard" ordnance, munitions and warfare chemical products to a manufacturer, is, as a rule, supplied only for purpose of production for the United States Government by such manufacturer; and

(7) Reproduction of official test report and crater effect of demolition bomb, together with reference to Ordnance Department of the Army, and of official photographs taken by the Navy and by the Army Chemical Warfare Service, together with statements to that effect, notwithstanding fact bomb referred to was not used by the Government, chart or graph appearing in connection with photograph as report of test on cylindrical type was supplied with proviso that it was not to be used for advertising or promotion purposes, and depictions of projectiles and fuzes with Government identification marks thereon placed only on "standard" products used by the United States Government, notwithstanding fact products sold did not bear such marking and such products were not "standard" products or equipment used by Army or Navy;

Represented and implied, through use of such corporate name, U. S. Ordnance Engineers, Inc., and of such various references and depictions as above set forth and indicated in conjunction therewith, that said corporation and said company had such official, semiofficial or close relationship with the United States Government, through its Army Ordnance Department and Chemical Warfare Service, as to afford said U. S. Ordnance Engineers, Inc., access to and use of all information and experience, including experimental and development work of said military subdivisions relating to warfare products and to Government standards and specifications therefor, and that said U. S. Ordnance Engineers, Inc., was favored and especially fitted by such relationship to supply purchasers with warfare ordnance, munitions, chemicals, and related products, and that such products conformed to Government standards and were identical or nearly identical with those used by the Government, and that said U. S. Ordnance Engineers, Inc., was the successor in business to said corporation, or Lake Erie Chemical Co.;

Facts being as above indicated and set forth, and that their said representations were false and misleading and grossly exaggerated their status as sellers of warfare products, neither they nor any of their officers or personnel had any general or privileged access to the secret, confidential, or restricted materials or information of any of the divisions of the War Department, nor access to materials or information of said Department or of the Army, which was in any respect superior to that of competitors, or which was not available to such competitors, said U. S. Ordnance Engineers, Inc., made or produced only small portion of products offered and sold by it, and had not been and was not solicited for bids on Government contracts for ordnance, munitions, or warfare chemicals or any of said products, and had not and did not sell to any branch of the Government, and there are substantial number of purchasers and prospective purchasers of such products in foreign countries, and purchasers for export of said products from the United States to foreign countries, who are not informed or familiar with the policy and practice of the War Department as respects supplying of specifications for manufacture of such products for the Government as above set forth and who are not informed and do not know that said Department prohibits, for the most

part, private manufacture and sale for export of such products classified as "standard";

With tendency and capacity to mislead and deceive prospective purchasers and purchasers of warfare products for export and in foreign commerce into false and erroneous belief that such various representations as above set forth were true, and into consideration and purchase of their said products in reliance thereon, and with tendency and capacity, through said representations and practices, including those contrary to established public policies and regulations of the War Department, to induce consideration and purchase of their products, and divert export trade and foreign commerce in such products from their competitors in such trade and commerce, including manufacturers and sellers who refrain from and do not use selling methods or practices which are in violation of established policies and regulations of the War and Navy Departments, as contrary to public policy and to public interest, and contrary to the best interests of the trade:

Held, That such representations and practices had been and were to the prejudice of the public and competitors in export trade and foreign commerce, and constituted unfair methods of competition.

Mr. Jay L. Jackson for the Commission.

Jones, Day, Cockley & Reavis, of Cleveland, Ohio, 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," as extended by Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade and for other purposes," the Federal Trade Commission having reason to believe that Lake Erie Chemical Co., doing business as U. S. Ordnance Engineers, Inc., both such corporations being hereinafter referred to as respondents, have been and are using unfair methods of competition in export trade in violation of the provisions of section 5 of said first named act as extended by section 4 of said last named 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, Lake Erie Chemical Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. It is now and for more than 1 year last past has been engaged in the manufacture and sale of chemicals, ordnance, and munitions, and in the distribution of said products between, among and across the various States of the United States, in the District of Columbia and in the business of exporting

such chemicals, ordnance, and munitions from the United States to foreign nations.

In the course and conduct of its business, the respondent, Lake Erie Chemical Co., 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 manufacture, sale, and distribution of chemicals, ordnance, and munitions between, among, and across the various States of the United States, in the District of Columbia and in the export thereof to foreign nations.

PAR. 2. The respondent, U. S. Ordnance Engineers, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland in said state, and with an export office located in New York, N. Y. The said respondent is in fact a controlled subsidiary of the respondent, Lake Erie Chemical Co., and is now and for more than 1 year last past has been engaged in the business of exporting, as the export agent of respondent, Lake Erie Chemical Co., chemicals, ordnance, and munitions from the United States to foreign nations, in substantial competition with other corporations, partnerships, firms, and individuals likewise engaged in the business of exporting chemicals, ordnance, and munitions from the United States to foreign nations.

PAR. 3. In the course and conduct of their business said respondents in soliciting the sale of and selling their products and professional services in interstate and foreign commerce advertised the same by means of illustrated catalogs which they distributed widely among customers and prospective customers, and in which the following statements and representations appear:

U. S. ORDNANCE ENGINEERS, Incorporated
Successors in Business to the Lake Erie Chemical Company

when in truth and in fact the Lake Erie Chemical Co. has at all times since its incorporation continued in business and the U. S. Ordnance Engineers, Inc., is not its successor, but in fact represents merely the separate incorporation of its export business to foreign countries.

At page 2 and on subsequent pages of section I of said catalog, under the heading of "Military Experience," the following statements appear:

Military experience in the manufacture of Ordnance Material is generally acknowledged to be of the utmost importance. Unless guided by officers who have actually taken part in both open and trench warfare, it is impossible

for any manufacturer to visualize the kinds of equipment needed and the necessity for their perfect functioning.

* * * * * * *

U. S. Ordnance Engineers, Inc., is staffed by men expert in their knowledge of chemistry, electricity, and explosives, and in the precision methods necessary to the manufacture of military supplies. Added to this knowledge is their record of service in the United States Army and their wide experience in major operations of attack and defense in the World War.

Confidence in the technical ability of these officers is recognized in official military circles. Sound approval of the quality and effectiveness of the warfare material which they manufacture is indicated by wide international purchase and use.

MILITARY STANDARDS

The UNITED STATES ARMY has spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service. To take advantage of this rich store of experience, U. S. Ordnance Engineers, Inc., conforms strictly to U. S. Army specifications in every possible respect.

The construction of fuzes has had especial attention, for unless the fuze functions, no other part can function. In all aerial drop bombs, grenades, and candles, the fuzes, boosters, and primer detonators are made in the closest possible accordance with U. S. Army specifications. U. S. Army standards are likewise followed in selecting the particular fuze to be used for each bomb or projectile.

U. S. Army standards are closely adhered to in the manufacture of all other equipment, such as portable chemical cylinders, smoke and gas screen apparatus for airplanes, tanks and gas projectors, bombs, etc.

At page 4 of section I of said catalog there appears a portrait of B. C. Goss, Ph. D., D. S. M., "Ex-Lieutenant Colonel, U. S. Army, President, U. S. Ordnance Engineers, Inc."; "Ex-Chief, Chemical Warfare Service, 2d American Army, A. E. F."; together with the following statement:

As Chemical advisor in the office of the Chief of Chemical Warfare Service, later as chief gas officer of the 1st Army Corps, and finally of the 2nd Army,

* * * * * * *

He retains his rank of Lieutenant Colonel in the Reserve Corps of the United States Army.

At pages 5 and 7 of section I of said catalog appear facsimile reproductions of letters signed by Brigadier General Amos A. Fries, Chief of Chemical Warfare Service; Brigadier General Malin Craig, Chief of Staff, Army of Occupation, U. S. A.; Major General Liggett, Commanding the First Army Corps, U. S. A.; and Major General George E. Leach, Chief, Militia Bureau, U. S. A., all having reference to the standing of Dr. Goss in the military service.

At page 6 of section I of said catalog appears the portrait of A. F. Spring, Vice President, U. S. Ordnance Engineers, Inc., who:

* * * during the World War served as an officer in the Chemical Warfare Service of the United States Army and after his discharge at the end of the war, he was commissioned in the Chemical Warfare Reserve and now holds the rank of Major in this branch of the service. He was recently ordered to active duty by the War Department and appointed Official Instructor in Chemical Warfare at the National Rifle Matches, Camp Perry, Ohio.

and a portrait of H. A. Grundler, Plant Superintendent, U. S. Ordnance Engineers, Inc., who:

* * * holds the rank of Lieutenant in the Chemical Warfare Reserve, assigned to the manufacturing arsenal, Toxic Smoke and Lachrymatory Division.

At page 7 of section I of said catalog, the following statements appear:

U. S. Ordnance Engineers, Inc., is ideally qualified to advise regarding the tactical uses of toxic or nontoxic gas, liquid fire, white-hot molten metal, and smoke. This company can organize, equip, and train a modern chemical warfare regiment, battalion, or company.

This instruction and organization is supervised by United States Army Chemical Warfare Service Reserve Officers in the company's employ, who are themselves chemists and chemical engineers of long experience. Dr. B. C. Goss, president of the company, prepared the orders for the use of chemicals in many major engagements of the U. S. Army in France.

At page 12 of section I of said catalog, under the statement:

Suppliers of fuzes, chemicals, and gas-protection equipment to the United States Government.

appear reduced photographs of 24 checks on the Treasurer of the United States to the order of Lake Erie Chemical Co., representing:

Remittances from the United States Government during one month for orders filled.

On the front cover and at pages 1, 2, and 3 of section II, and on pages 1, 6, and 7 of section III, and on page 2 of section IV of said catalog appear reproductions of official photographs taken by the U. S. Navy, and others taken by the U. S. Army Chemical Warfare Service, the latter having printed thereunder the statement "Courtesy of the U. S. Army Chemical Warfare Service." On page 2 of section II of said catalog appears a modified reproduction from the official Chemical Warfare textbook of a test on efficiency of rifle fire with target and firing point covered. At page 1 of section III, in addition to

the official photograph of the U. S. Army Chemical Warfare Service, the following statement appears:

AERIAL DROP BOMBS

In standardizing on "cylindrical" bomb bodies, U. S. Ordnance Engineers, Inc., follows the trend of the U. S. Army practice,

* * * * * * *

In selecting types of bombs and weights of each, it is urgently recommended that consideration be given to the results obtained and conclusions drawn from the vast amount of development and test work done by the U. S. Army.

At page 8 of section VII of said catalog appears an advertisement of high explosive fragmentation grenades, and in the description of the hand grenade there described is contained the following statement:

They are loaded with the latest U. S. Army standard high explosive which is far superior to T. N. T. for this purpose.

and in the description of the rifle grenades there illustrated, appears the following statement:

While the rod type rifle grenade is U. S. Army Standard, V. B. rifle grenades Mk. I can also be supplied in Fragmentation Grenades only.

Said U. S. Ordnance Engineers, Inc., further caused pictorial representations of bombs and fuzes to appear in said catalog indicating the Government identification marks to be or actually impressed thereon, in the text accompanying such photographs, when in truth and in fact said products were not manufactured by said corporations with the marks shown.

PAR. 4. Said respondents further published and reproduced in rearranged form on page 2 of section II of said catalog an official U. S. Army report on the crater effect of demolition bombs, together with a pictorial representation of a crater made by the explosion of such a bomb, and beside these placed a picture of a demolition bomb marked with the name of the Lake Erie Chemical Co., Cleveland, Ohio—there appearing nothing in the accompanying reading matter to negative the inference that the crater so pictured was made by a bomb manufactured by the respondent Lake Erie Chemical Co., or that the data shown in the Army test report related to the effects of a bomb having a different origin, when in truth and in fact the bomb crater appearing in said photograph was caused by the detonation of a demolition bomb made by a manufacturer other than respondent, Lake Erie Chemical Co.

PAR. 5. The United States Army Regulations No. 140-5 on page 41, article 82-B, under the heading of "Reserve Officers," provide as follows:

(*b*) *Use of Military Titles.*—Officers will not use or permit to be used their military titles in connection with commercial enterprises of any kind. Military titles are conferred upon individuals for military purposes and their use as a commercial asset may subject both the individual officer concerned and the service itself to unfavorable criticism, which, even if unmerited, is unnecessary and inadvisable. Such use of military titles is disapproved by the War Department.

Officers will not engage in or permit their names to be connected with any activity, participation in which is incompatible with the status of an officer of the Army.

and the records of the Adjutant General of the officers of the U. S. Army, do not show that permission was ever given respondents, to use in advertising matter any official Chemical Warfare Service photographs or photographs of Ordnance Material.

PAR. 6. (*a*) The use of the name, U. S. Ordnance Engineers, Inc.; respondents' advertising which includes portraits of former officers of the U. S. Army in uniform, facsimile reproductions of written recommendations from former officers, photographs of checks on the Treasurer of the United States showing payments for purchases made by the United States Government, various references to the alleged utilization by said respondents of the developmental and test work done by the U. S. Army, and the use of U. S. Army standard explosives, the unauthorized use of official photographs taken by the U. S. Navy and the U. S. Army Chemical Warfare Service, and the use in descriptions of military material of official ordnance marks, has the capacity and tendency especially with foreign buyers, of confusing and misleading them respecting the relations of said respondents to the Government of the United States and the War Department, tending to induce the belief that respondents are representatives of or closely connected with the Government of the United States and the War Department and that because of such relationship respondents are especially qualified to supply purchasers of ordnance material and related products of the sort identical or nearly identical with that utilized by the War Department, when in truth and in fact such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public, particularly foreign buyers, to answer respondents' advertisements and to obtain their products, because of the erroneous belief thus engendered, and to divert trade to respondents from substantial competitors engaged in the sale of similar products in domestic and foreign commerce.

PAR. 7. The aforesaid practices of respondents tend to and do divert export trade to respondents from their said competitors. Such practices have the tendency to bring American trade into disrepute

with the general buying public in foreign countries and affect generally and adversely the reputation and good will enjoyed by such other exporters of and in the United States who compete with respondents in foreign commerce, and whose representations do not have the tendency and capacity to induce buyers to believe that they have any official or semiofficial connection with the Government of the United States and the War Department.

PAR. 8. The above representations and practices of respondents have been and are to the prejudice of and substantially injure the public and respondents' competitors in commerce, and constitute unfair methods of competition in export trade 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," as extended by Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade 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 June, 1935, issued and served its complaint in this proceeding upon respondents, Lake Erie Chemical Co., and U. S. Ordnance Engineers, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act, as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An Act to promote export trade and for other purposes." On the 22d day of July, 1935, respondents filed their separate answers 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 their counsel, Messrs. Jones, Day, Cockley & Reavis, 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 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, answers, and stipulation, said stipulation having been approved, accepted and filed, 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, Lake Erie Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2200 Scranton Road (formerly 5806 Hough Avenue) in the city of Cleveland, State of Ohio. For several years immediately past said corporate respondent has been, and now is, engaged in the business of manufacturing and selling warfare chemicals, ordnance, munitions and kindred products, and in offering for sale and selling the same to prospective purchasers and purchasers located in and throughout the several States of the United States and the District of Columbia, in the course of which it has caused, and causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of Ohio to said purchasers located in various States of the United States other than the State of Ohio and to purchasers located in the District of Columbia.

For several years immediately prior to the 8th day of August, 1933, said respondent directly engaged in the business of offering for sale and selling its aforesaid products to prospective purchasers and purchasers located in foreign countries, and caused said products, when sold or ordered, to be shipped and transported from its place of business in the United States to purchasers located in various countries other than the United States of America.

On the 8th day of August 1933, Mr. B. C. Goss, president of said respondent company, and others of its managing officials, organized a corporation known as "U. S. Ordnance Engineers, Inc.," being the corporate respondent named in the complaint and referred to herein, and caused the same to be incorporated under the laws of the State of Ohio, and thereupon authorized the said corporation to engage in offering for sale and selling the said products of respondent Lake Erie Chemical Co. to prospective purchasers and purchasers located in foreign countries, and for sale and distribution in export trade from the United States.

Respondent, U. S. Ordnance Engineers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2200 Scranton Road (formerly 5806 Hough Avenue) in

the city of Cleveland, State of Ohio. Said corporation was promoted, organized and incorporated on August 8, 1933, by individuals who were then the managing officers and stockholders of respondent Lake Erie Chemical Co. Respondent Lake Erie Chemical Co., acquired none of the stock of, and does not own directly or indirectly any of the stock of, said respondent, U. S. Ordnance Engineers, Inc. All of the latter's voting stock is owned, with a few exceptions, by individuals who are also owners of the voting stock of Lake Erie Chemical Co. Of the five directors of respondent, U. S. Ordnance Engineers, Inc., two are directors of respondent, Lake Erie Chemical Co., said respondents having a common president and treasurer but different vice-presidents and secretaries.

Respondent, U. S. Ordnance Engineers, Inc., maintains no offices outside of the city of Cleveland, Ohio, but it does employ a selling representative, one F. V. Huber, who sells upon a commission basis, maintains offices at his own expense at 247 Park Avenue (formerly 21 West Street) in the city of New York, N. Y., and at all times material to this proceeding has been, and now is, the exclusive selling representative of said respondent in South and Central American countries. The said representative is authorized by respondent to, and does, carry the name of U. S. Ordnance Engineers, Inc., on the door of his offices and a listing of said name in the New York Telephone Directory, all at his own expense. With the knowledge and consent of the managing officers of said corporate respondent, it has been, and is, the practice of said representative to imprint or rubber stamp his New York address and the name of U. S. Ordnance Engineers, Inc., upon the face of certain catalogs, represented by "Commission's Exhibt No. 1" hereto annexed, made a part hereof, and hereinafter referred to, and in the course thereof said representative did imprint or rubber stamp on the face of certain of said catalogs the following:

U. S. ORDNANCE ENGINEERS, INC.,
Export Department,
21 West Street, New York, New York,
Cable Address: "Rabuh New York."

Since the 8th day of August 1933, respondent, U. S. Ordnance Engineers, Inc., has been, and now is, engaged in the export business of offering for sale or selling warfare chemicals, ordnance, munitions, and kindred products, primarily the products manufactured by, although not limited to, respondent, Lake Erie Chemical Co., to prospective purchasers and purchasers located in foreign countries, and has caused and causes the same, when sold or ordered, to be shipped and exported from the United States to purchasers thereof located

in countries other than the United States of America. In addition thereto said respondent maintains and sells an engineering service, constructs gas plants for foreign governments, and also sells a service involving instruction in tactics of a military and civil nature.

Since the 8th day of August 1933, respondents, Lake Erie Chemical Co. and U. S. Ordnance Engineers, Inc., have been, and now are, jointly engaged in causing the aforesaid products of respondent, Lake Erie Chemical Co. to be advertised, offered for sale, sold, and exported in foreign commerce and export trade from the United States to foreign countries, in the course of which said respondents have been and are in competition with other corporations, firms, partnerships, or individuals engaged in offering for sale, selling, and exporting like products in said commerce and trade.

PAR. 2. During the month of November 1933, respondents caused approximately 700 copies of a catalog, consisting of a green-colored cover and 22 separate pages of advertising statements, illustrations, and representations, relating and referring to the products of respondents, to be made up and thereafter circulated and distributed to and among prospective foreign customers for the products therein listed and offered for sale, including all purchasers located in foreign countries, who had been customers of respondent, Lake Erie Chemical Co. Most of said products are products manufactured by respondent, Lake Erie Chemical Co.

The outside front cover of said catalog bears in print, among other things, the name and address of respondent, U. S. Ordnance Engineers, as follows:

U. S. ORDNANCE ENGINEERS, INC.
CLEVELAND . OHIO . U. S. A.

The first inside front page, the inside last page and pages numbered section II—page 1, section III—page 1, section IV—page 1, section V—page 1, section VI—page 1, and section VII—page 1, bear in print, among other things, reference to both respondents, as follows:

U. S. ORDNANCE ENGINEERS, Incorporated Successors in Business to the Lake Erie Chemical Company
5806 HOUGH AVENUE, CLEVELAND, OHIO, U. S. A.
CABLE ADDRESS—"LECCO, CLEVELAND"—Bentley's Code

A trade-mark, in the form of an eagle, bearing in his talons an aerial projectile with the word "LECCO" imprinted thereon, appears on the outside front cover and on each separate page of said catalog. The word "LECCO", as it appears throughout said catalog, is an abbreviation for, and signifies, "Lake Erie Chemical Company,"

respondent herein. The said trade-mark also appears separately on the stationery, letterheads and envelopes used by respondent, U. S. Ordnance Engineers, Inc. The said trade-mark is thus used with the knowledge and consent of the managing officials of respondent, Lake Erie Chemical Co.

The full and complete corporate name of respondent U. S. Ordnance Engineers, Inc., is "U. S. Ordnance Engineers, Inc.," and the letters "U. S." appearing as a part thereof are not abbreviations of any part of said corporate name. However, prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions, both in the United States and in foreign countries, have construed and do construe the letters "U. S." in connection with the corporate name of respondent U. S. Ordnance Engineers, Inc., to stand for and signify "United States." From time to time inquiries have been received by the Department of State and by the War Department of the United States Government relative to said respondent, in which said respondent is referred to as "United States Ordnance Engineers, Inc."

PAR. 3. On Page 2 and following pages of section I of said Catalog appear the following statements:

MILITARY EXPERIENCE

Military Experience in the manufacture of Ordnance Material is generally acknowledged to be of the utmost importance. Unless guided by officers who have actually taken part in both open and trench warfare, it is impossible for any manufacturer to visualize the kinds of equipment needed and the necessity for their perfect functioning.

The lives of men and the success or failure of the military operation involved, depend upon how well the manufacturer has done his part. Defects in munitions cannot be remedied at the front.

U. S. Ordnance Engineers, Inc. is staffed by men expert in their knowledge of chemistry, electricity, and explosives, and in the precision methods necessary to the manufacture of military supplies. Added to this knowledge is their record of service in the United States Army and their wide experience in major operations of attack and defense in the World War.

Confidence in the technical ability of these officers is recognized in official military circles. Sound approval of the quality and effectiveness of the warfare material which they manufacture is indicated by wide international purchase and use.

MILITARY STANDARDS

The United States Army has spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service. To take advantage of this rich store of experience, U. S. Ordance Engineers, Inc. conforms strictly to U. S. Army specifications in every possible respect.

The construction of fuzes has had especial attention, for unless the fuze functions, no other part can function. In all aerial drop bombs, grenades,

and candles, the fuzes, boosters, and primer detonators are made in the closest possible accordance with U. S. Army specifications. U. S. Army standards are likewise followed in selecting the particular fuze to be used for each bomb or projectile.

U. S. Army standards are closely adhered to in the manufacture of all other equipment, such as portable chemical cylinders, smoke and gas screen apparatus for airplanes, tanks and gas projectors, bombs, etc.

QUALITY

The quality of chemicals, metals, electrical and other equipment which enter into the products of U. S. Ordnance Engineers, Inc. is the highest obtainable for the purpose. Every item is carefully tested and rigidly inspected, both before and after assembly. Materials are described in detail in specification sheets and actual records of performance are supplied. No precaution is omitted that could possibly increase the accuracy or safety in use.

PLANT

U. S. Ordnance Engineers, Inc. maintains a modern chemical manufacturing plant in Cleveland, Ohio, U. S. A., where assembling and loading is done.

On Page 1 of Section III of said catalog appear the following statements:

AERIAL DROP BOMBS

In standardizing on "cylindrical" bomb bodies, U. S. Ordnance Engineers, Inc. follows the trend of the U. S. Army practice, thus providing an easily procurable body which is economical to manufacture and which, at the same time, has excellent flight and detonation characteristics.

Major General Samuel Hof, Chief of Ordnance, U. S. Army, says in his 1932 report on "The Progress of American Munitions During the Past Year":

Recent experience has shown that cylindrical bombs are as stable as the stream-lined type and have the advantages of ease of manufacture, reduced cost, and high rate of production by processes commonly used in industry.

In selecting types of bombs and weights of each, it is urgently recommended that consideration be given to the results obtained and conclusions drawn from the vast amount of development and test work done by the U. S. Army.

All materials entering into the construction of bombs and fuzes supplied by U. S. Ordnance Engineers, Inc. are of the best possible quality and are subjected to rigid inspection during production, as well as on completion of the finished assembly.

Further statements referring to the "U. S. Army" and to "standard" equipment of the United States Army appear throughout said catalog. On page 8 of section VII, for example, referring to High-Explosive Fragmentation Grenades, appear the statements, among others:

They are loaded with the latest U. S. Army standard high explosive, which is far superior to T. N. T. for this purpose.

While the rod type rifle grenade is U. S. Army standard, V. B. Rifle Grenades Mk. I can also be supplied in Fragmentation Grenades only.

On page 2, section III, of said catalog, appears an official U. S. Army report on the Crater effect of demolition bombs, together with the pictorial representation of a crater made by the explosion of such bomb.

On page 4 of section I of said catalog, beneath the words "EX-CHIEF, CHEMICAL WARFARE SERVICE" appears a portrait of B. C. Goss, president of the respondent companies, in the official military dress or uniform of the United States Army, together with the following statements, among others:

B. C. GOSS, PH.D., D.S.M.
Ex-Lieutenant Colonel, U. S. Army
PRESIDENT, U. S. ORDNANCE ENGINEERS, Inc.

Dr. Goss is a well-known army man and the leading expert in the manufacture and use of gas.

He retains his rank of Lieutenant Colonel in the Reserve Corps of the United States Army.

On page 6 of section I of said catalog appear portraits of A. F. Spring and H. A. Grundler, in the official military dress or uniforms of the United States Army, together with the following statements, among others:

A. F. SPRING, VICE PRESIDENT, U. S. ORDNANCE ENGINEERS, INC.

During the World War he served as an officer in the Chemical Warfare Service of the United States Army and after his discharge at the end of the war, he was commissioned in the Chemical Warfare Reserve and now holds the rank of Major in this branch of the service. He was recently ordered to active duty by the War Department and appointed Official Instructor in Chemical Warfare at the National Rifle Matches, Camp Perry, Ohio.

H. A. GRUNDLER, PLANT SUPERINTENDENT, U. S. ORDNANCE ENGINEERS, INC.

He holds the rank of Lieutenant in the Chemical Warfare Reserve, assigned to the manufacturing arsenal, Toxic Smoke and Lachrymatory Division.

On page 7 of section I of said catalog appear facsimile reproductions of letters of recommendation, referring to the said B. C. Goss and A. F. Spring and their standing in military service and signed by A. A. Fries, Brigadier General, U. S. A., Chief of Chemical Warfare Service; Malin Craig, Chief of Staff, Army of Occupation; Liggett, Major General, Commanding First Army Corps, and George E. Leach, Major General, Chief, Militia Bureau.

On page 7 of section I of said catalog further appear the following statements:

U. S. Ordnance Engineers, Inc., is ideally qualified to advise regarding the tactical uses of toxic or non-toxic gas, liquid fire, white-hot molten metal and smoke. This company can organize, equip, and train a modern chemical warfare regiment, battalion or company.

This instruction and organization is supervised by United States Army Chemical Warfare Service Reserve Officers in the company's employ, who are themselves chemists and chemical engineers of long experience. Dr. B. C. Goss, President of the company, prepared the orders for the use of chemicals in many major engagements of the U. S. Army in France.

On the front cover and at pages 1, 2, and 3 of section II, and on pages 1, 6, and 7 of section III, appear reproductions of official photographs taken by U. S. Navy and others taken by the U. S. Army Chemical Warfare Service, the former having printed thereunder the statement "Official Photographs U. S. Navy" and the latter having printed thereunder the statement "Courtesy of the U. S. Army Chemical Warfare Service."

In addition thereto, on pages 3 and 4 of section III and page 2 of section V of said catalog, in connection with projectiles and fuzes thereon illustrated, appear such U. S. Government identification marks as "Mk. VII," "M5," "Mk. XI," "Mk. VII. MII," "Mk. XIV," "M-6," "M-10," and "M-1." The said markings are United States Government markings placed only on "standard" products used by the Government of the United States. Such markings do not appear on products sold by respondents to foreign purchasers, but the said markings as they appear in the aforesaid catalog Exhibits indicate and signify to a substantial number of foreign purchasers that the products so represented are "standard" products of the United States Government.

On page 12 of section I of said catalog, in connection with reduced photographs of 24 checks on the Treasurer of the United States to the order of respondent, Lake Erie Chemical Co., appear the following statements:

Suppliers of fuzes, chemicals and gas protection equipment to the United States Government

Remittances from the United States Government during one month for orders filled.

PAR. 4. The aforesaid portraits of officers in their official dress and uniforms as officers of the United States Army, facsimile reproductions of letters of recommendations from officers of the United States Army and the War Department of the United States Government, photographs of checks on the Treasurer of the United States showing payments for purchases by the United States Government the references to utilization of the experimental, development, and test work and experience of the United States Army, Ordnance Department,

and Chemical Warfare Service, the numerous references to U. S. Army specifications and standards, and to the United States Army, Ordnance Department, Chemical Warfare Service, the reproduction of official test report and crater effect of demolition bomb carrying reference to the Ordnance Department of the United States Army, and the use of United States Government identification markings for warfare products used by the United States Government, all as appearing in the aforesaid catalogue, in connection with official photographs taken by the United States Navy and by the United States Army Chemical Warfare Service, and as combined with and appearing under the name U. S. Ordnance Engineers, Inc., and with the words "U. S. Ordnance Engineers, Incorporated.—Successors in business to the Lake Erie Chemical Company," imply and represent and have a tendency and capacity to induce the belief, that respondents have had, and that respondent U. S. Ordnance Engineers, Inc., has, such official, semiofficial, or close relationship with the United States Government, through its Army, Ordnance Department and Chemical Warfare Service, as to afford respondent U. S. Ordnance Engineers, Inc., access to, and use of, all information and experience, including experimental and development work, of said military subdivisions of the United States Government relating to warfare products and to United States Government standards and specifications therefor; that respondent U. S. Ordnance Engineers, Inc., is favored and especially fitted by such relationship to supply purchasers with warfare ordnance, munitions, chemicals, and related products; that said products conform to United States Government standards and are identical, or nearly identical, with those used by the Government of the United States, and that respondent U. S. Ordnance Engineers, Inc., is the successor in business to the Lake Erie Chemical Co.

The aforesaid representations are false and misleading and otherwise grossly exaggerate respondent's status as sellers of warfare products, as more fully appears from the following statement of the facts.

The full and complete corporate name of respondent U. S. Ordnance Engineers, Inc., is "U. S. Ordnance Engineers, Inc.," and the letters "U. S." appearing as a part thereof are not abbreviations of any part of said corporate name. However, prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions, both in the United States and in foreign countries, have construed and do construe the letters "U. S." in connection with the corporate name of respondent U. S. Ordnance Engineers, Inc., to stand for and signify "United States." From time to time inquiries have been received by the Department of State and by the War Department of the United

States Government relative to said respondent, in which said respondent is referred to as "United States Ordnance Engineers, Inc."

Among prospective purchasers and purchasers of warfare chemicals, ordnance, and munitions for export from within the United States, inclusive of representatives of foreign governments, there are a substantial number who regard the Government of the United States as peculiarly and specially fitted to select and buy warfare chemicals, ordnance, and munitions of the highest utility and value for the purposes intended, and who ascribe such utility and value to such products when made for, or used by, the Government of the United States, such that the representation of any such product as being one approved or used by the Government of the United States materially contributes to induce and effect the sale of such product to, and purchase by, such purchasers.

As a part of its executive branch of government, the Government of the United States maintains a "War Department," the said Department itself being independently known and described as the "United States War Department." The said Department maintains a separate division on ordnance which is genarally known and described as the "Ordnance Department." The said Ordnance Department is the responsible agency of the War Department for the purchase, supply, and disposition of ordnance and munitions for the United States Army. A great quantity of such supplies are manufactured by the Government of the United States under the supervision of said Department. Another branch of the said War Department is described and known as the "Corps of Engineers," sometimes described and known as "Engineering Division of the United States War Department." Another branch or division of the said War Department is known and described as the "Chemical Warfare Service," which is the responsible agency of the War Department for the supervision of the manufacture of certain warfare chemicals and for the purchase and supply thereof for the United States Army.

The aforesaid divisions of the War Department are also the responsible agencies of the War Department in the matter of planning for the supply of warfare products coming within their respective Departments in times of national emergency. Certain materials and information, including standards and specifications for warfare supplies, are regarded and marked as "secret," or as "confidential," or as "restricted." Materials so marked are not publicly disseminated and are not made available to private persons, except that "restricted" information is subject to dissemination to private persons upon special grant by the division of the War Department responsible therefor. These classifications are employed with respect to a great many

of the ordnance, munitions, and chemical warfare products, and the plans and specifications therefor, used by the Government of the United States. Information not so classified is generally available to the public and private persons in the form of public documents. Neither of the respondent corporations, or any of their officers or personnel, have had or have any general or privileged access to the secret, confidential, or restricted materials or information of any of the divisions of the War Department, and said respondents have not had and have no access to materials or information of the War Department or of the United States Army, which is in any respect superior to that of competitors of the respondent corporations, or to materials and information which is not available to such competitors.

Through and on behalf of its War Department and Army, the United States Government has in fact spent vast sums of money on experimental and development work both in the Ordnance Department and in the Chemical Warfare Service, but the information incident thereto, for the most part, is retained in the confidential files of the War Department, and is not available to respondents or to competitors of respondents. As a general rule, where such information, including plans and specifications (drawings) for so-called "standard" ordnance, munitions, and warfare chemical products, is supplied to any manufacturer, it is for purpose only of production for use of the Government of the United States by such manufacturer, and not for the production and sale of the products involved to others than the Government of the United States.

"United States Army Ordnance and Specifications," containing general specifications and regulations covering ammunition, and "U. S. Army Specifications," containing general specifications and regulations covering ammunition except small arms ammunitions, which are distributed to manufacturers who are supplied with designs and specifications incident to contracts with the aforesaid Ordnance and War Departments for the production of materials of prescribed design for said Departments, provide among other things as follows:

General Specifications for Ammunition, page 4,

III Drawings—

22. Drawings furnished by United States—Where the Ordnance Department contracts for material of a prescribed design that Department will furnish to the contractor one set of prints for use in manufacture. These prints will be taken from the Ordnance Department's tracings, and shall be considered confidential, for the use of the contractor in the prosecution of Government work only, and will show general features and such details as are required in the execution of the work.

General Specifications for Ammunition Except Small Arms Ammunition, pages 1 and 2,

II. Duties and Responsibilities of the Contractor—

10. Drawings.—a. Prescribed design.—In cases where the War Department contracts for materials of a prescribed design, the Department will furnish to the contractor a set of prints for use in manufacture. All drawings furnished by the United States shall be considered confidential and for the use of the contractor in the prosecution of Government work only.

A substantial number of warfare chemicals, ordnance, and munitions purchasers and prospective purchasers located in foreign countries, and purchasers for export of said products from the United States to foreign countries, are not informed or familiar with the aforesaid policy and practice of the War Department, or with the particulars and details of said policy and practice as related to private manufacturers of such products in the United States. Said prospective purchasers and purchasers generally are not informed and do not know that the War Department of the United States Government for the most part prohibits the private manufacture and sale for export of those warfare chemicals, ordnance and munition products which are privately manufactured for, and used by, the Government of the United States and classified as "standard."

Respondent Lake Erie Chemical Co. is, and continuously has been, in the business of manufacturing and selling warfare chemicals, ordnance, munitions, and kindred products, and respondent U. S. Ordnance Engineers, Inc., is not successor to the business of the Lake Erie Chemical Co. Most of the products represented in the aforesaid catalogue are manufactured by respondent Lake Erie Chemical Co. Respondent U. S. Ordnance Engineers, Inc., manufactures or produces only a small portion of the products which it offers for sale and sells. Said respondent has not been, and is not, solicited for bids on Government contracts for ordnance, munitions, or warfare chemicals, or any of said respondents' products, and it has not sold, and does not sell, to any branch of the Government of the United States. Respondent Lake Erie Chemical Co. from time to time has sold such products to the Government of the United States and from time to time has been the recipient of information relating to ordnance, munitions, and warfare chemical products, or otherwise disseminated incident to contract bids and to the purchase of such materials as the War Department or United States Army purchases from manufacturers from time to time.

The chemical bombs referred to and illustrated on page 5 of section III of the aforesaid catalogue are not manufactured by respond-

ent U. S. Ordnance Engineers, Inc. The said bombs have not been adopted or approved by the U. S. Government and are not "standard" products used by the United States Army or Navy. With respect to the statement appearing on said page, "For chemical fillings, the 25 pound and 100 pound bombs are United States Army standard," the chemical fillings for said bombs are not "U. S. Army Standard." Certain other products offered for sale and represented in the said catalogue, such as gas masks represented on page 6, section IV, and giant military candles represented on page 5 of section VII, among other products represented therein, are not products used by the Army, Navy, War and Navy Departments of the United States Government, and other of said products represented therein are not "standard" products or equipment used by any of said branches of the United States Government.

The bomb described as "100 lb. (120 lb.) Demolition Bomb," illustrated and referred to on page 2 of section III of said catalogue, in connection with a photograph and chart or graph report showing the crater effect of demolition bombs, has not been and is not used by the Governmemt of the United States. The chart or graph appearing on said page, in connection with such photograph, is a report of a test conducted by the United States Ordnance Department on a cylindrical type of bomb and the same was made and supplied by said Department with the written proviso that the same was not to be used for advertising or sales promotion purposes.

PAR. 5. The president of the respondent companies, and the vice president of respondent U. S. Ordnance Engineers, Inc., B. C. Goss, and A. F. Spring, respectively, are in fact exofficers of the U. S. Army. The said persons and A. H. Grunder, plant superintendent of said respondent, whose pictures, names, and military titles appear in the aforesaid catalogue, were at the time the said catalogue was distributed, as aforesaid, officers of the Reserve Corps of the United States Army.

It is the policy and practice of the War and Navy Departments of the United States Government to prohibit and prevent the use of official or military titles, uniforms, and insignia, in any way connected with such departments or with the United States Army or Navy, in connection with any commercial and nongovernmental enterprise, and it is contrary to the established policy of said Departments for any military or naval officers, Reserve or otherwise, whether active or retired, or for any private individual, in any way to use or employ official United States Government military or naval titles, uniforms, or insignias, in connection with the promotion of a private commercial enterprise. The military titles, uniforms and insignia, re-

ferred to in connection with the officers and photographs appearing on pages 4, 5, 6 and 7 of of section I of said catalog are in fact titles, uniforms and insignia employed and used by the United States Army in official military service of the Government of the United States.

PAR. 6. Among the competitors of respondents, hereinabove referred to in paragraph 1, are manufacturers and sellers who refrain from and do not use selling methods or practices which are contrary to established policies and regulations of the War and Navy Departments of the Government of the United States. Such manufacturers so refrain upon the ground that such selling methods or practices are contrary to public policy and to public interest and contrary to the best interests of the trade.

PAR. 7. The aforesaid representations, which respondents caused to be made, as aforesaid, have a tendency and capacity to mislead and deceive prospective purchasers and purchasers of warfare products, for export and in foreign commerce, into the false and erroneous belief that said representations are true, and into the consideration and purchase of respondents' products in reliance upon such belief. The aforesaid representations and practices, including representations and practices which are contrary to the aforesaid established policies and regulations of the War Department of the Government of the United States, further have a tendency and capacity to induce the consideration and purchase of respondents' products and to divert export trade and foreign commerce in warfare products to respondents from their competitors in such trade and commerce.

CONCLUSION

The aforesaid representations and practices of respondents have been, and are, to the prejudice of the public and of respondents' competitors in export trade and foreign commerce and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act as extended by section 4 of an act of Congress, approved April 10, 1918, entitled "An Act to promote export trade, 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 as to the facts entered into between respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further

evidence of 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 proceedings, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of the Federal Trade Commission Act as extended by Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

It is ordered, That respondents and each of them, Lake Erie Chemical Co. and U. S. Ordnance Engineers, Inc., their officers, agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of warfare chemicals, ordnance, munitions, and kindred products in foreign commerce and export trade, do forthwith cease and desist from:

1. Representing that respondents, or either of them, or any of their officers, agents, or employees, directly or indirectly, have had, or have, any official, semiofficial, or close relationship with any department or subdivision of the Government of the United States, which affords respondents, or either of them, access to, or use of, all information in the possession of such department or subdivision relating to warfare products, or to experimental or development work connected therewith.

2. Representing that respondents, or either of them, or any of their officers, agents, or employees, directly or indirectly, have had, or have, access to, or use of, any information in the possession of any department or subdivision of the Government of the United States relating to any warfare product, or to any experimental or development work connected therewith, when such is not the fact.

3. Representing that all, or any, of respondents' products are "standard" products of the United States Army, Ordnance, or Chemical Warfare Service, or are used by said Government, or are identical, or nearly identical, with warfare products used by said Government, when such is not the fact.

4. Representing or referring to any individual, or officer of the United States Army, directly or indirectly in the employ of either of respondents, by way of reference to any official military title which such individual or officer presently holds by virtue of any existing officership in, or official connection with, any military subdivision or department of the Government of the United States.

5. Employing the use of any photograph of an officer of the United States Army in the official military dress or uniform of an officer of the United States Army.

6. Employing the use of any test report on any warfare product by any department or subdivision of the Government of the United States, which has been or is issued or supplied by such department or subdivision subject to prohibition or restriction against the use of such test report for advertising or sales promotion purposes; or

7. Representing respondent U. S. Ordnance Engineers, Inc., as successor in business to Lake Erie Chemical Co., 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 this order.

IN THE MATTER OF

ORVILLE J. BOND, TRADING AS ZEPHYR RADIO COMPANY

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

Docket 3294. Complaint, Jan. 4, 1938—Decision, June 14, 1939

Where an individual respectively engaged, under different trade names, in sale of radio parts to wholesalers, and in sale of radio sets, purchased from manufacturers thereof, to service men or hardware dealers, and, as thus engaged in selling to purchasers in other States, in substantial competition with those engaged in sale and distribution of similar sets through the medium of mail orders among the various States and in the District of Columbia; in advertising his said sets through direct mail, from lists of prospects, in periodicals and in a semimonthly newspaper—

Represented that his five-tube, $6.95 set would get politics, news, music, market and weather reports on a "new Zephyr world-wide, all electric, battery, or auto radio" with all latest improvements, etc., facts being his said Zephyr set, complete with all working parts and aerial designed as local receiver primarily for reception in a radius of not over 100 miles, was not capable of picking up signals from the major continents of the world, or even from remote places on this continent, and would not, as understood from term, give "world-wide reception;"

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that such representation was true, and with result, as direct consequence of such mistaken and erroneous belief thus induced, of causing consuming public to purchase substantial volume of said sets, and of diverting trade unfairly from those engaged in sale of like and similar products and intended for like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

Held, That such act and practice, as above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward J. Hornibrook*, trial examiner.
Mr. Carrel F. Rhodes and *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 Orville J. Bond, individually and trading as Zephyr Radio Co., hereinafter referred to as respondent, has been for more than 2 years last past, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a pro-

ceeding 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, Orville J. Bond, now is, and at all times for more than 2 years last past has been, doing business under the trade name Zephyr Radio Co., with his office and principal place of business located at 13139 Hamilton Avenue, Detroit, Mich.

PAR. 2. Orville J. Bond, operating under the trade name Zephyr Radio Co., is now and for more than 2 years last past has been engaged among other things, in the sale and distribution of radio receiving sets, radio parts, and like products, to the purchasing public and to dealers for resale located in the various States of the United States other than the State of Michigan or the State of origin of the shipment and in the District of Columbia.

There is now, and has been for more than 2 years last past, a course of trade and commerce by said respondent in the aforesaid radio receiving sets, radio parts, and like products between and among the various States of the United States. Respondent causes said products, when sold, to be transported from his place of business in Detroit, Mich., into and through States of the United States other than the State of Michigan to the purchasing public and to merchant vendees thereof at their respective points of location.

In the course and conduct of his said business, respondent is now, and has been for more than 2 years last past, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution of radio receiving sets, radio parts, and similar products, in like 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 his said business as described in paragraphs 1 and 2 hereof, respondent for the purpose of inducing the purchase of the said products so offered for sale by him, has circulated and distributed to retail dealers and to the purchasing public throughout the United States by mail and otherwise, in newspapers and magazines, folders, pamphlets, circulars, letters, and other literature, and by broadcasts over radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, advertisements of the products sold by him. In many of said advertisements, respondent has caused pictorial representations of radio sets to be prominently and conspicuously displayed, together with statements describing said radio receiving sets and products and their reception and uses. Among such representations

and statements used by respondent with pictorial representations of a radio set, are the following:

5 tube $6.95. Get politics, news, music, market and weather reports on a new Zephyr world-wide all-electric battery or auto radio. All latest improvements—Money Back Guaranty.

Zephyr All Wave Aerial—builds up weak signals.

The aforesaid statements and representations, together with other similar statements and representations not here set-out in full, serve as representations on the part of respondent that said radio sets are sold to retail dealers and the purchasing public for $6.95 complete with all necessary working parts including among other parts cabinet, complete working chassis, five live working tubes properly installed therein and sufficient aerial for satisfactory, world-wide reception, that the said price of $6.95 is the price at which said radio receiving sets are sold and delivered to the purchasers thereof complete with all necessary working parts for satisfactory reception; that the said sets when installed are capable of receiving and will receive broadcast programs from all parts of the world satisfactorily and that the "Zephyr All Wave Aerial" builds up and strengthens weak signals.

PAR. 4. In truth and in fact, the aforesaid radio receiving sets are not sold and delivered to retail dealers and the purchasing public complete with all necessary working parts for $6.95. Said radio receiving sets do not have the capacity to receive broadcasts of radio programs from all parts of the world free from static or other interferences at all times under normal conditions. Said radio receiving sets are not equipped with all of the necessary working parts for the clear and uninterrupted reception of world-wide radio broadcasts. At the price of $6.95, said radio receiving sets are not equipped with five live working tubes. Said radio receiving sets are not equipped with sufficient aerial for world-wide reception. Said aerial does not build up and strengthen weak signals.

PAR. 5. The said representations of said respondent aforesaid are false and misleading and have had and do have the tendency and capacity to mislead and deceive a substantial number of radio dealers and members of the purchasing public into the mistaken and erroneous belief that the respondent's said radio receiving sets so represented to sell at $6.95 are fully equipped with all of the said necessary working parts and are capable of receiving satisfactorily radio broadcasts from all over the world, and that the Zephyr All Wave Aerial builds up and strengthens weak signals. The said representations of said respondent have had and do have the capacity to induce

retail dealers and members of the purchasing public to buy respondent's said receiving sets and radio products because of the erroneous beliefs engendered by such false and misleading designations and representations and to unfairly divert trade to respondent from competitors who are engaged in the sale of radio receiving sets that are fully equipped with tubes, aerial, and all necessary working parts for satisfactory reception of world-wide broadcasts and like products to those sold by respondent in commerce between and among the various States of the United States and the District of Columbia, who do not use such false and misleading designations and representations. 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. 6. The above-alleged acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in 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 January 4, 1938, issued and served its complaint in this proceeding upon respondent Orville J. Bond, 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 Merle P. Lyon, attorney for the Commission, before Edward J. Hornibrook, 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 complaint, the answer thereto, testimony and other evidence, brief in support of the complaint, respondent not having filed brief and having not requested oral argument; 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, Orville J. Bond, is an individual trading under the firm name and style of Zephyr Radio Co. and Bond Radio Co., with office and principal place of business located at 13139 Hamilton Avenue, Highland Park (Detroit), Mich. Respondent, under the trade name Bond Radio Co., sells radio parts to wholesalers, and under the trade name Zephyr Radio Co. sells radio sets bearing the brand name "Zephyr" to dealers, that is to service men or hardware dealers. These radio sets are purchased from radio manufacturers.

PAR. 2. Respondent causes said radios, when sold, to be transported from his place of business in Highland Park (Detroit), Mich., to purchasers thereof located in the States of the United States other than the State of Michigan.

PAR. 3. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with corporations, partnerships, and other individuals engaged in the sale and distribution of similar radio receiving sets through the medium of mail orders between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale of and in selling his radio receiving sets and for the purpose of creating a demand therefor, now causes, and for more than 1 year last past has caused, advertisements to be issued, published, and circulated to and among the members of the consuming public of the United States through the medium of direct mail from lists of prospects, in magazines, and in a semimonthly newspaper.

PAR. 5. Respondent makes, and has made to the general consuming public, statements with reference to the alleged value and merit of said radio receiving set, and some of the statements so made and circulated by the respondent are as follows:

BUY RADIOS WHOLESALE

5 Tube Set 30 DAYS' TRIAL! !
$6.95

Get politics, news, music, market and weather reports on a new Zephyr world-wide, all electric, battery or auto radio. All latest improvements—Money Back Guarantee—1 year Free service. Write for FREE catalog and advertise-user plan. Zephyr Radio Company, 13139 Hamilton Avenue, Detroit, Michigan.

PAR. 6. The "Zephyr" radio receiving set advertised to sell at $6.95 is a complete radio set with all working parts and aerial designed as a local receiver primarily for reception in a radius not over 100 miles and will not give world-wide reception; "world-wide reception" as

applied to radio means that a radio is capable of picking up signals transmitted from the major continents of the world and this radio receiving set is not capable of picking up signals from the major continents of the world, nor even from remote places on this continent.

PAR. 7. The false and misleading claim and representation made by the respondent, as aforesaid, by means of advertisement in offering for sale and selling the "Zephyr" five-tube set $6.95 is and has been calculated to, and has had and now has the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the belief that such representation is true.

PAR. 8. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representation, causes the consuming public to purchase a substantial volume of said five-tube $6.95 "Zephyr" radio receiving sets, with the result that trade has been unfairly diverted from corporations, partnerships, and other individuals engaged in the sale of like and similar products intended to be used for like and similar purposes, who truthfully advertise their products. As a result 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.

CONCLUSION

The aforesaid act and practice of the respondent as set forth in the findings as to the facts is to the prejudice of the public and of respondent's competitors and constitutes unfair methods of competition in commerce in violation 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, testimony, and other evidence taken before Edward J. Hornibrook, 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 by Carrel F. Rhodes, counsel for the Commission, the respondent not having filed brief, 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, Orville J. Bond, his representatives, agents, and employees, directly or through the name Zephyr

Radio Co., or any other trade or corporate name or other device, in connection with the offering for sale, sale and distribution of its radio receiving sets in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that the radio set now known as and sold under the name Zephyr Radio Receiving Set for $6.95, or any other radio receiving set similarly constructed, will give world-wide reception, or that such a set will receive programs broadcast from all continents.

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

F & F 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 3727. Complaint, Feb. 28, 1939—Decision, June 14, 1939

Where a corporation engaged in manufacture, sale, and distribution of its "F & F Cough Syrup" and "F & F Lozenges" to wholesale distributors and retail dealers in various other States and in the District of Columbia; in advertisements which it disseminated and caused to be disseminated through newspapers of general circulation among the various States and through radio continuities broadcast from stations of extrastate audience—

Represented, directly and indirectly, that said cough syrup, taken orally, and said lozenges, dissolved in the mouth, would ward off and stop and check coughs, colds, and sore and irritated conditions of the throat, and that each product was a competent and effective remedy for and would cure coughs, colds, and sore throats, through such statements, among others, as "* * * ingredients vaporize and spread to the nasal passages, the windpipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach," "* * * see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results," etc., "* * * works on a unique principle called Syn-Er-Gism," etc., and "Why not try the cough syrup that thousands are switching to," etc., facts being neither product was a cure or remedy for coughs, colds, and throat irritations, nor competent treatment therefor, and had no therapeutic value other than to give temporary palliative relief from throat irritations and simple colds;

With effect of misleading and deceiving portion of purchasing public into mistaken and erroneous belief that its said products possessed properties and effectiveness represented for them, and that they constituted effective remedy or cure for coughs, colds, and irritated conditions of the throat, and into purchase of quantities of said products, and of thereby diverting unfairly trade to it from competitors engaged in sale and distribution in commerce among the various States and in the District of Columbia of preparations for use in treatment of aforesaid ailments, diseases, and conditions for which it recommended its said products:

Held, That such practices, as above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices.

Mr. Carrel F. Rhodes for the Commission.
Mayer, Altheimer & Kabaker, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that F & F Laboratories,

Inc., hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, F & F Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska with its offices and principal place of business located at 3501 West Forty-eighth Place, Chicago, Ill.

PAR. 2. Respondent, F & F Laboratories, Inc., has been for more than 1 year last past and is now engaged in the business of manufacturing or compounding, advertising, selling, and distributing preparations known and designated as F & F Lozenges and F & F Cough Syrup for the treatment of coughs, colds, and irritated or sore throat. Said respondent now causes and for more than 1 year last past has caused its said products to be sold to dealers and the purchasing public through various advertising means. Respondent has caused the same when sold to be transported from its principal place of business in Chicago, Ill., to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Illinois 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 products, F & F Cough Lozenges and F & F Cough Syrup so sold and distributed by respondent in 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, respondent is now and has been in competition with other corporations and with partnerships, firms, and individuals likewise engaged in the sale and distribution of similar products and preparations intended for use for the same purposes for which respondent's said F & F Cough Lozenges and F & F Cough Syrup is offered for sale and sold in commerce among and between the various States of the United States and the District of Columbia.

Among said competitors are many who do not misrepresent the nature and character, quality, and effectiveness of their respective products and preparations.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are disseminated in commerce between and among the various States of the

United States; and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in various States of the United States other than the States in which said broadcasts originate, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

F & F gets rid of coughs quick.

Protects children from coughs.

Knocks colds cold.

These cough lozenges were made to give you effective and fast relief.

Each F & F Lozenge gives you a fifteen minute medicated treatment. Better head off that cough before it gets started.

F & F Syrup and Lozenges give you a complete treatment.

I was always bothered by bronchial trouble and F & F certainly gave me relief.

Each Lozenge gives you a 15 minute medicated treatment that checks coughs and gives quick relief.

Take F & F Cough Lozenges the minute you feel a dryness of the throat. Head off a cough before it gets started. Each F & F Cough Lozenge gives you a 15 minute medicated treatment with real lasting relief.

Thousands have already switched to these really medicated lozenges and find that they are better than a gargle for relieving a raw throat.

Also, certain F & F ingredients vaporize and spread to the nasal passages, the windpipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach.

And for a raw throat, a great many folks say that F & F is much more effective than a gargle. Now—here's the reason. Each F and F Lozenge gives the throat a 15-minute treatment because it is especially made to dissolve slowly. A gargle, on the other hand, lasts only a few seconds.

We want you to try F and F Cough Syrup to see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results. You see, F and F acts on the principle of Syn-Er-Gism.

You see, F and F Cough Syrup works on a unique principle called Syn-Er-Gism. It means the cooperation of a number of ingredients, each one doing a different thing, when several different things must be done to bring prompt relief.

Other F and F ingredients moisten the throat, thus helping to loosen phlegm and break up the cough.

Why not try the cough syrup that thousands are switching to this winter for sure, safe, comforting and fast relief from coughs due to colds.

There's nothing like F and F Cough Syrup for bringing fast and safe relief for coughs due to colds.

Use F and F Cough Syrup at the first sign of an irritated throat and check a cough before it gets started—out of control.

F and F Cough Syrup is based on the Syn-Er-Gistic principle. This means that it consists of a number of highly effective ingredients carefully selected to work together, and thus bring quicker and better results than the same ingredients if taken individually.

Through the aforesaid statements and representations and others of similar import and meaning not herein set-out, all of which purport to be descriptive of respondent's said products and their effectiveness in use, the respondent imports and implies that said products, F & F Cough Lozenges, which are to be dissolved in the mouth, and F & F Cough Syrup, which is to be taken orally, will ward off, arrest, prevent, stop, relieve, and check coughs and colds and sore and irritated conditions of the throat and that each of said products is a competent and effective treatment for and will cure coughs, colds, and sore throats.

PAR. 4. The representations, implications, and advertisements so used and disseminated by the respondent in connection with the sale and distribution of said products in said commerce as aforesaid, are false, misleading, and deceptive. In truth and in fact neither of said products, when used as directed by the respondents, will ward off, arrest, prevent, stop, relieve, or check the ailment or condition commonly referred to as a cold, coughs, and sore and irritated throats. Neither of said products, when used alone or in connection with the other, is a competent and effective treatment for, nor will it cure, a cough, a cold, or a sore and irritated throat.

The use of said products in the treatment of colds, irritated throats, and similar ailments and conditions will not do more than afford, in some instances, slight temporary symptomatic relief, such as relieving coughs and minor throat irritations in the early stages of a cold. Such use will not permanently and effectively cure or relieve coughs and sore throats due to pulmonary, bronchial, laryngeal, tracheal, or pharyngeal disturbances which have a cough and sore throat as one of the symptoms thereof.

Respondent's claims as to the therapeutic value and efficacy of said preparations are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparations which might truthfully be made.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading representations, implications, and advertisements dis-

seminated as aforesaid with respect to said products 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 and mistaken belief that such false representations, implications, and advertisements are true and that respondent's products possess the properties claimed and represented and will accomplish the results indicated and cause a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective products and preparations as described in paragraph 2. 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 and in the District of Columbia, to the injury of its competitors and to the injury of the public.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of February 1939, issued and served its complaint in this proceeding upon said respondent, F & F Laboratories, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 28, 1939, 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 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 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, accepted, and filed, 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 makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F & F Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and maintains its offices and principal place of business at 3501 West Forty-eighth Place, Chicago, Ill.

PAR. 2. Respondent, F & F Laboratories, Inc., a corporation, has been for more than 1 year last past and is now engaged in the manufacture, sale, and distribution of cough syrup and lozenges, which preparations are known as F & F Cough Syrup and F & F Lozenges and are designated for the treatment of coughs, colds, and irritated or sore throat. Respondent has caused and now causes the said cough syrup and lozenges and like products, when sold, to be shipped and transported from its place of business in the city of Chicago in the State of Illinois to wholesale distributors and retail dealers located in various States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, the said respondent was at all times hereinafter referred to in competition with other corporations and with partnerships, firms, and individuals likewise engaged in the manufacture and sale of cough syrups, lozenges, and like 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 its said business as hereinabove described, respondent, F & F Laboratories, Inc., has disseminated and has caused to be disseminated, advertisements concerning its products, in newspapers having a general circulation among and between the various States of the United States and by radio continuities broadcast from radio stations which have sufficient power to, and do, convey programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, in which the following statements, claims and representations were made to induce the purchase of its said products:

F & F gets rid of coughs quick.
Protects children from coughs.
Knocks colds cold.

These cough lozenges were made to give you effective and fast relief.

F & F Syrup and Lozenges give you a complete treatment.

I was always bothered by bronchial trouble and F & F certainly gave me relief.

Each Lozenge gives you a 15 minute medicated treatment that checks coughs and gives quick relief.

Head off a cough before it gets started. Each F & F Cough Lozenge gives you a 15 minute medicated treatment with real lasting relief.

Thousands have already switched to these really medicated lozenges and find that they are better than a gargle for relieving a raw throat.

Also, certain F & F ingredients vaporize and spread to the nasal passages, the windpipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach.

We want you to try F and F Cough Syrup to see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results. You see, F and F acts on the principle of Syn-Er-Gism.

You see, F and F Cough Syrup works on a unique principle called Syn-Er-Gism. It means the cooperation of a number of ingredients, each one doing a different thing, when several different things must be done to bring prompt relief.

Other F and F ingredients moisten the throat, thus helping to loosen phlegm and break up the cough.

Why not try the cough syrup that thousands are switching to this winter for sure, safe, comforting and fast relief from coughs due to colds.

There's nothing like F and F Cough Syrup for bringing fast and safe relief for coughs due to colds.

Use F and F Cough Syrup at the first sign of an irritated throat and check a cough before it gets started—out of control.

F and F Cough syrup is based on the Syn-Er-Gistic principle. This means that it consists of a number of highly effective ingredients carefully selected to work together, and thus bring quicker and better results than the same ingredients if taken individually.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's products and their effectiveness in use, respondent has represented and does now represent directly and indirectly that said products, F & F Cough Syrup, when taken orally, and F & F Lozenges, when dissolved in the mouth, will ward off, arrest, prevent, stop, and check coughs, colds, and sore and irritated conditions of the throat, and that each of said products is a competent and effective remedy for and will cure coughs, colds, and sore throats.

PAR. 6. The Commission further finds that the representations, implications, and advertisements so used and designated by the respondent in connection with the sale and distribution of said products in said commerce as aforesaid are false and misleading and constitute false advertising. In truth and in fact neither of said products is a cure or remedy for coughs, colds, and throat irritations nor a com-

petent treatment therefor and have no therapeutic value other than to give temporary palliative relief from the symptoms of throat irritations and simple colds.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading representations, implications, and advertisements with respect to said products disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a portion of the purchasing public into the mistaken and erroneous beliefs that respondent's said products possess the properties and effectiveness represented for them and that they are an effective remedy or cure for coughs, colds, and irritated conditions of the throat and that each of the said products is a competent and effective treatment for coughs, colds, and sore throats; and into the purchase of quantities of respondent's said products, F & F Cough Syrup and F & F Lozenges. As a consequence trade has been unfairly diverted to the respondent from its competitors who are engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of preparations for use in the treatment of the aforesaid ailments, diseases, and conditions for which respondent recommends its products.

CONCLUSION

The practices of the respondent, F & F Laboratories, Inc., as set forth in the foregoing findings as to the facts, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the 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, F & F Laboratories, Inc., a corporation, its officers, representatives, agents, and employees directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of medicinal preparations designed for the treatment of coughs, colds, and irritated or sore throat in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that respondent's preparations now designated as F & F Cough Syrup and F & F Lozenges, or any other preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other names, are a cure or remedy for coughs, colds, or throat irritations, or constitute a competent treatment therefor.

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

J. H. TIGERMAN, DOING BUSINESS AS EVER-KEEN DRY SHAVER COMPANY AND ROYCE DRY SHAVER COMPANY

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

Docket 3757. Complaint, Apr. 12, 1939—Decision, June 14, 1939

Where an individual engaged in assembling, and in selling and distributing electric razors to dealers in various States and in the District of Columbia—

(*a*) Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said merchandise to ultimate consumers wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including push cards, order blanks, pamphlets illustrating his products, and circulars explaining his plan of selling the same and allotting premiums or prizes under such plan, by which person selecting from long list of feminine names that corresponding with name concealed under card's large master seal, was awarded electric dry shaver being thus disposed of, and amount, if any, paid for chance by customers was contingent upon particular number pushed by chance, in accordance with cards' explanatory legends, and solicitor or operator of card was likewise thus compensated, and customer-purchaser of said individual was compensated by difference between aggregate receipts from each card and cost to him of two shavers involved in operation thereof; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with aforesaid or similar sales plans involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, or without cost, and under which articles of merchandise involved were distributed to purchasing public wholly by lot or chance, contrary to an established public policy of the Government of the United States, and in violation of the criminal laws, and in competition with 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;

With the result that many persons were attracted by said sales plan or method employed by said individual in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, because of said game of chance, of unfairly diverting substantial trade to said individual from his competitors aforesaid who do not use such or equivalent method; and

(*b*) Represented, in advertising disseminated through periodicals of general circulation and through circulars and other printed matter, that his said products were equal in value to a $15 electric dry shaver and would give

performance equal to that of such a device, through such statements, among others, as "* * * a genuine $15 dry shaver in type and actual value," "* * * has all the features of $15 devices—and many others besides," and "Acclaimed as the best dry shaver on the market regardless of price," facts being products in question were of inferior grade and workmanship, last only a very short period of time, and will not accomplish the results as satisfactorily as a higher grade mechanism sold at a higher price;

(*c*) Represented, in his advertising disseminated as aforesaid, that his products were sold on a 10-day trial or money-back basis, and that one of his said shavers thus sold was guaranteed for 1 year and another for 5 years against mechanical defects, facts being he did not sell his said product on such a basis, but failed and refused to make any refund to purchasers, and did not guarantee products referred to for periods alleged, but refused to make repairs unless cost thereof was paid by purchaser; and

(*d*) Represented that the possible and average earnings of agents and salesmen in the ordinary course of business was from $50 to $100 a week, and that certain of his salesmen were earning average profits of from $300 to $500 a month and more in the ordinary course of business, through such statements, among others, as "Make up to $100 a week introducing this new low priced precision built electric dry shaver," and "If you are making less than $300 a month, drop whatever you are doing and get in on this sensational, new money making proposition," facts being possible and average earnings of salesmen and agents were not $50 to $100 a week, said sums were not true representation of average net earnings or profits consistently made by his active full-time agents or salesmen in ordinary course of business and under normal conditions and circumstances, they earned only a fraction of the amount represented, and none of them earned $300 to $500 a month, and said sums were never consistently earned by any agent or salesman in ordinary course of business and under normal conditions and circumstances;

With effect of misleading substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of his products by reason of such belief, and of thereby unfairly diverting, through such statements and representations, trade to himself from many competitor-dealers in like and similar products engaged in commerce among the various States and in the District of Columbia, and who do not make such false, deceptive and misleading statements and representations concerning their products and their methods of doing business:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. H. Tigerman,

individually, and trading as Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., hereafter referred to as respondent, has violated the provisions of the 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 respondent is an individual trading under the names of Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., with his principal office and place of business located at 43 East Ohio Street, in the city of Chicago, Ill. Respondent is now and for some time past has been engaged in the business of assembling electric razors and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be shipped or transported from his 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 at their respective points of location. There is now and has been for some time last past a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, 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.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and selling and distributing his merchandise in said commerce, furnishes and 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 distributes and has distributed to the purchasing public in said commerce certain literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting extra premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name

selected. Said push card has 81 small partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of 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 a large master seal, concealed within which is one of the feminine names appearing on the reverse side of the said push card. The push card bears printed legends or instructions as follows:

NAME UNDER SEAL
RECEIVES A

$15
VALUE

ELECTRIC
DRY
SHAVER

Numbers 1 to 16
FREE
All Numbers Over 16
Pay Only 15 Cents.
NO HIGHER

Do not remove
seal until
entire card
is sold.

Respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push card, which are as follows:

PLAN NO. 3
SALES CARD PLAN

Here is a plan that brings big profits without selling. It is the sales card method. You actually give away Ever-Keen Electric Shavers. You distribute sales cards to friends, neighbors and others. They in turn present their cards to their friends who "take selections" paying the small sums of 1¢ to 15¢ for an opportunity to own an Ever-Keen Dry Shaver. The person selecting the name corresponding with the one appearing under the seal on the card receives an Ever-Keen Dry Shaver. Each one of your solicitors collects a total of $10.00 from his sales card which he turns over to you. You give him 2 Ever-Keen Dry Shavers 1 for himself and for the person who selected the name corresponding with the one appearing under the seal. Two Ever-Keen Dry Shavers cost you as little as $5.50—so you can make as much as $4.50 on every sales card. Think of the big profits that can come from operating a dozen to two dozen cards at one time.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by

means of a game of chance, gift enterprise, or lottery scheme. Such push cards are similar to the push cards hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, 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 a 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged 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 or without cost. Many persons, firms, and corporations who sell and 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert substantial trade to the 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, respondent has disseminated and does now disseminate false and misleading representations with reference to his electric razors designated as "New Royce Dry Shaver" and "Ever-Keen Electric Dry Shaver" by means of advertising copy inserted in magazines and periodicals having a general circulation and by circulars and by other printed matter, which representations purport to be descriptive of said products and the effectiveness of their use. By means of this advertising disseminated as aforesaid the respondent represents that said products are equal in value to a $15 electric dry shaver and will give per-

formance equal to that of a $15 device. Typical of such representations are the following:

It has everything claimed for any other dry shaver—and more. It is closer cutting, self-starting—a genuine $15 dry shaver in type and actual value.

The Royce Dry Shaver has all the features of $15 devices—and many others besides.

Acclaimed as the best dry shaver on the market regardless of price.

We build a dry shaver that will do everything a $15 shaver will do and do it much better than many higher priced shavers.

In truth and in fact respondent's products designated as New Royce Dry Shaver and Ever-Keen Electric Dry Shaver are not equal in value and will not give the performance of a $15 electric dry shaver. Instead these products are of inferior grade and workmanship and last only a very short period of time. They will not accomplish the results as satisfactorily as a higher-grade mechanism sold at a higher price.

PAR. 6. In his advertising disseminated as aforesaid respondent represents that his products are sold on a "10 day trial or money-back basis" and that the New Royce Dry Shaver is guaranteed for 1 year and that the Ever-Keen Electric Dry Shaver is guaranteed for 5 years against mechanical defects.

In truth and in fact the respondent does not sell said products on a 10-day-trial basis but instead fails and refuses to make any refund to purchasers. Furthermore, the respondent does not guarantee said products for the periods alleged but instead refuses to make repairs unless the cost thereof is paid by the purchaser.

PAR. 7. For the purpose of inducing salesmen and agents to sell his products, respondent represents that the possible and average earnings of agents and salesmen in the ordinary course of business is from $50 to $100 per week and that certain of his salesmen are earning average profits of from $300 to $500 per month and more in the ordinary course of business. Typical of these representations are the following:

Make up to $100 a week introducing this new low priced precision built electric dry shaver.

If you are making less than $300 a month, drop whatever you are doing and get in on this sensational, new money making proposition.

Profits up to $5—$10—even $25 in a day are possible.

If $50, $60 or $75 a week sound good to you, don't delay.

The same proposition is paying others up to $300, $400, $500 and more every month in all sections of the country.

In truth and in fact the possible and average earnings of salesmen and agents are not $50 to $100 a week and said sums are not a true representation of the average net earnings or profits consistently

made by respondent's active full-time agents or salesmen in the ordinary course of business and under normal conditions and circumstances. In fact such agents and salesmen earn only a fraction of the amount represented. Furthermore, none of the respondent's salesmen have earned or now earn $300 to $500 per month, and said sums so represented have never been consistently earned by any agent or salesman in the ordinary course of business and under normal conditions and circumstances.

PAR. 8. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's products as a result of such erroneous belief. There are among said competitors of respondent many dealers in like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their method of doing business. By the aforesaid statements and representations by respondent trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done, and has been done, by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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, 1939, issued and served its complaint in this proceeding upon respondent J. H. Tigerman individually and trading as Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., charging him with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 15, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. 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. The respondent is an individual trading under the names of Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., with his principal office and place of business located at 43 East Ohio Street in the city of Chicago, Ill. Respondent is now and for some time past has been engaged in the business of assembling electric razors and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be shipped or transported from his 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 at their respective points of location. There is now and has been for some time last past a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, 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.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and selling and distributing his merchandise in said commerce, furnishes and 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 distributes and has distributed to the purchasing public in said commerce certain literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting extra premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name

selected. Said push card has 81 small partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of 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 a large master seal, concealed within which is one of the feminine names appearing on the reverse side of the said push card. The push card bears printed legends or instructions as follows:

NAME UNDER SEAL

RECEIVES A

$15 VALUE Numbers 1 to 16 FREE All Numbers over 16 Pay Only 15 Cents. NO HIGHER	ELECTRIC DRY SHAVER	Do not remove seal until entire card is sold

Respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push card, which are as follows:

PLAN NO. 3

SALES CARD PLAN

Here is a plan that brings big profits without selling. It is the sales card method. You actually give away Ever-Keen Electric Shavers. You distribute sales cards to friends, neighbors and others. They in turn present their cards to their friends who "take selections" paying the small sums of 1c to 15c for an opportunity to own an Ever-Keen Dry Shaver. The person selecting the name corresponding with the one appearing under the seal on the card receives an Ever-Keen Dry Shaver. Each one of your solicitors collects a total of $10.00 from his sales card which he turns over to you. You give him 2 Ever-Keen Dry Shavers 1 for himself and for the person who selected the name corresponding with the one appearing under the seal. Two Ever-Keen Dry Shavers cost you as little as $5.50—so you can make as much as $4.50 on every sales card. Think of the big profits that can come from operating a dozen to two dozen cards at one time.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such

push cards are similar to the push cards hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, 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 a 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged 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 or without cost. Many persons, firms, and corporations who sell and 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert substantial trade to the 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, respondent has disseminated and does now disseminate false and misleading representations with reference to his electric razors designated as "New Royce Dry Shaver" and "Ever-Keen Electric Dry Shaver" by means of advertising copy inserted in magazines and periodicals having a general circulation and by circulars and by other printed matter, which representations purport to be descriptive of said products and the effectiveness of their use. By means of this advertising disseminated as aforesaid the respondent represents that said products are equal in value to a $15 electric dry shaver and will give per-

formance equal to that of a $15 device. Typical of such representations are the following:

It has everything claimed for any other dry shaver—and more. It is closer cutting, self-starting—a genuine $15 dry shaver in type and actual value.

The Royce Dry Shaver has all the features of $15 devices—and many others besides.

Acclaimed as the best dry shaver on the market regardless of price.

We build a dry shaver that will do everything a $15 shaver will do and do it much better than many higher priced shavers.

In truth and in fact respondent's products designated as New Royce Dry Shaver and Ever-Keen Electric Dry Shaver are not equal in value and will not give the performance of a $15 electric dry shaver. Instead these products are of inferior grade and workmanship and last only a very short period of time. They will not accomplish the results as satisfactorily as a higher-grade mechanism sold at a higher price.

PAR. 6. In his advertising disseminated as aforesaid respondent represents that his products are sold on a "10 day trial or money-back basis" and that the New Royce Dry Shaver is guaranteed for 1 year and that the Ever-Keen Electric Dry Shaver is guaranteed for 5 years against mechanical defects.

In truth and in fact the respondent does not sell said products on a 10-day-trial basis but instead fails and refuses to make any refund to purchasers. Furthermore, the respondent does not guarantee said products for the periods alleged but instead refuses to make repairs unless the cost thereof is paid by the purchaser.

PAR. 7. For the purpose of inducing salesmen and agents to sell his products, respondent represents that the possible and average earnings of agents and salesmen in the ordinary course of business is from $50 to $100 per week and that certain of his salesmen are earning average profits of from $300 to $500 per month and more in the ordinary course of business. Typical of these representations are the following:

Make up to $100 a week introducing this new low priced precision built electric dry shaver.

If you are making less than $300 a month, drop whatever you are doing and get in on this sensational, new money making proposition.

Profits up to $5—$10—even $25 in a day are possible.

If $50, $60 or $75 a week sound good to you, don't delay.

The same proposition is paying others up to $300, $400, $500 and more every month in all sections of the country.

In truth and in fact the possible and average earnings of salesmen and agents are not $50 to $100 a week and said sums are not a true representation of the average net earnings or profits consistently

made by respondent's active full-time agents or salesmen in the ordinary course of business and under normal conditions and circumstances. In fact such agents and salesmen earn only a fraction of the amount represented. Furthermore, none of the respondent's salesmen have earned or now earn $300 to $500 per month, and said sums so represented have never been consistently earned by any agent or salesman in the ordinary course of business and under normal conditions and circumstances.

PAR. 8. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's products as a result of such erroneous belief. There are among said competitors of respondent many dealers in like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their method of doing business. By the aforesaid statements and representations by respondent trade is unfairly diverted to respondent from such competitors who are likewise engaged 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 respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the said facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent J. H. Tigerman, individually, and trading as Ever-Keen Dry Shaver Co., and as Royce Dry Shaver Co., or under any other name or names, his representatives, agents,

and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric razors or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, 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, any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

4. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

5. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor for any given period of time, which has not in fact been consistently earned net by such agent, salesman, representative, or distributor in the ordinary course of business, under normal conditions and circumstances.

6. Representing that electric razors or any similar products which are of inferior grade and workmanship are equal in value to products sold at a much higher price, or will give performance equal to such higher-priced products.

7. Representing that respondent's products are sold on a "trial" or "money-back basis," or on any similar plan unless the respondent does in fact make refunds to dissatisfied purchasers.

8. Representing that respondent's electric razors or similar products are guaranteed for any specified period of time 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.

IN THE MATTER OF

STANDARD BRANDS INCORPORATED AND STANDARD BRANDS OF CALIFORNIA

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 2986. Complaint, Nov. 21, 1936—Decision, June 15, 1939

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHETHER DUE ALLOWANCE ONLY FOR DIFFERENCES IN COST OF MANUFACTURE, SALE OR DELIVERY RESULTING FROM DIFFERING METHODS, ETC.—COST ASCERTAINMENT—ESTIMATES—COSTS—ITEMS, UNITS, AND ALLOCATIONS.

In proceeding in which corporation and its subsidiary, engaged on national scale in manufacture and sale of bakers' yeast, chiefly, to some 25,000 customers, under schedule of price differentials and practices in application thereof, challenged as constituting discrimination in price in violation of aforesaid section, offered cost studies, computations and allocations based upon lump sum estimates demonstrated by their own tabulations as erroneous, distributed results of such error throughout their cost study on basis of reassumed correctness of demonstrated errors, applied repeatedly such lump sum estimates directly and indirectly throughout their allocations of costs, and augmented "by difference" partial cost data obtained by actual survey in order to adjust final and vital results to coincide with lump sum estimates made at outset, resorted to use of such lump sum estimates in allocations of all costs, and included in costs allocated to bakers' yeast many items of cost not incurred in manufacture, sale and delivery of such product, and many items of cost which should be allocated equally to each pound of such yeast: *Held*, (1) That their lump sum estimates cannot be made the basis for price differentials; and (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS AND DIFFERENTIALS—WHERE UNJUSTIFIED BY DIFFERENCES IN COST, ETC.; BASED ON MONTHLY PURCHASE OR REQUIREMENT; APPLICABLE EQUALLY TO MULTI-UNIT-DELIVERY BUYERS; AND SPECIAL OFF-SCALE CONCESSIONS.

Where a corporation and its Pacific Coast subsidiary, which were engaged in the manufacture, sale and distribution of foil yeast, and, chiefly, of bakers' yeast of uniform grade and quality; and which—

(1) Constituted largest manufacturers of yeast in the United States, enjoyed between 55 and 65 percent of the total business, had 6 factories from the Atlantic to the Pacific, had 444 agencies and subagencies so geographically located throughout the country that the yeast would reach such agencies by common carrier within 24 hours after its manufacture and be delivered within 24 hours from such time of arrival from the refrigerated warehouses maintained exclusively for its storage, and served 25,000 customers in practically every city, town, village, and community in the United States, ranging from chain food organizations of national scope with 38 bakeries east of the Rockies and many thousands of retail stores, and baking companies of both national and sectional scope, with bakeries running into the scores, to smallest local concerns, in direct competition with the house-to-house and other selling by the larger enterprises; and

(2) Gave its customers the benefit of extensive free research and merchandising service, through advising them as to results from research activities carried on in their research laboratories and experiments made in effort to improve products made from yeast, and through experts employed to visit bakeries and render such assistance as they could to customers in overcoming difficulties encountered by said customers in manufacture of bread and allied products, through the sending of merchandising experts to instruct and advise customers as to how best to display their goods and secure business, through national advertising campaigns in periodicals and by radio, and through the furnishing of advertising material at cost, and at lower prices than otherwise comparably obtainable, to enable local bakers to tie in locally with national advertising campaigns, and through maintenance of free school for bakers, with the result that they were thereby enabled, through their service and goodwill, to secure more favorable prices for their products than were competitors—

In selling their bakers' yeast under price lists and schedules which they did not publish and with contents of which no customer was acquainted, and under which, as involved in instant case and applicable to large part of country and worked out in 11 steps, purchasers of 50,000 pounds and more of bakers' yeast received price of 14 cents a pound, purchasers of 10,000 to 50,000 pounds received price of 14½ cents a pound, those purchasing from 7,500 to 10,000 pounds received price of 16 cents, and prices in remaining 8 steps ranged upward from 17 cents for monthly purchases or requirements of buyer ranging from 5,000 to 7,500 pounds, to 25 cents for those purchasing from 1 to 150 pounds—

(*a*) Discriminated in price between customer competitors through said scale and price differentials, which were not justified by reason of differences in costs of delivering respective quantities therein set forth, and were not shown to be such as make only due allowances for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such yeast was to such purchasers sold or delivered, and under which (1) Nation-wide food chain, enjoying said 14 cent price on basis of purchases in aggregate for its large number of bakeries, requirements of no single one of which was such as to entitle it thereto, benefited by a saving of $25,000 over amounts payable for corresponding quantity purchased by 14½ cent customers, by $100,000 over 16 cent

customers, and by increasing amounts up to $550,000 over 25 cent customers, (2) customers paying highest price were discriminated against with respect to all other customers, (3) customers paying lowest prices, including Nation-wide chains, were given benefit of discrimination as against all other customers, (4) medium-sized independent baker was discriminated against with respect to his larger competitors and given benefit of discrimination as against his smaller competitors, with greatest discrimination in all instances in favor of most powerful competitor, and customer using approximately 10,000 pounds of yeast, and receiving either 16 cent or 14½ cent price, would need to increase monthly consumption of yeast by 40,000 pounds, at least, or monthly output of bread by 4,000,000 pounds, to secure 14 cent price, to which, on basis alone of delivery to separate factory or bakery of any customer, no customer was entitled, (5) under which the effect of the disparity involved, greater per unit as between extreme price brackets, was increased in total volume as between medium and lower price brackets, so that baker taking 1,499 pounds of yeast per month and paying scale price of 20 cents per pound would be discriminated against in sum of approximately $1,080 per year, as compared with baker paying 14 cents per pound;

With result, through such scale of prices and differentials involved therein, under which cost of producing pound of bread was increased by one-seventh of a cent as between baker paying 14 cents and one paying 25 cents, of enabling large bakeries and chains to make large and substantial savings which they might employ in the keen competition shown to exist between them and the smaller bakeries, and of conferring, through aforesaid and various other important cost differentials brought about under said scale in bakery business, with its large sales and close margins, constituting substantial, material and vital factors of competition, an advantage on purchasers of yeast at lower prices which might be reflected in many different ways in lessening or injuring of competition through use for periodical reductions in price or increase in service, sales effort and sales appeal, to the disadvantage of the bakers against whom such discriminations are employed; and

With result that effect of such discriminations in price was and might be substantially to lessen competition and tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which they and their customers were engaged, and to injure, destroy, or prevent competition with customers receiving benefit of such discrimination; and

(*b*) Discriminated in price by deviating from said schedule and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through practice of applying such schedule on basis of respective customers' monthly requirements, irrespective of whether or not such requirements were purchased of them, (1) between customers, on the one hand, who purchased all of their requirements of yeast from them, and customers who thus purchased only a part of their requirements, so that, under certain circumstances, purchaser buying his entire requirement would pay more than other customer buying similar quantity of them, but with larger monthly requirement, and would pay, also, same amount as still other customer purchasing less, but with same monthly requirement, and (2) between customer, on the one hand, who purchased some but not

all of his requirement from them, and other customer who also purchased some but not all of his requirement, so that, under certain circumstances, customer purchasing given quantity, but with larger requirement, might pay less than customer purchasing of them similar quantity, but with smaller requirement;

(*c*) Discriminated in price between different purchasers of their said yeast by deviating from said schedule, and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through practice of selling to purchasers based upon their total monthly requirements or purchases instead of upon the definite quantity or volume delivered monthly to the separate plants, bakeries, factories or warehouses of such respective customers, and under which practice food and bakery chains with numerous, widely scattered, separate bakeries or factories, deliveries to no one of which were such, as case might be, as to secure purchaser 14 cent, 14½ cent, or other more favorable price bracket, but would have fallen in price brackets ranging from 14½ cents to 19 cents and as high as 23 cents, received, through such aggregating practice, benefit of 14 cent, 14½ cent, or 15 cent price, and benefited thereby through savings secured through such discriminations in their favor and against those paying scale prices, in amounts aggregating many thousands of dollars; and

(*d*) Discriminated in price between different purchasers of their said yeast by deviating from said schedule and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through selling the same quantity or volume monthly to different purchasers at different prices, under practice of selling to some customers, including larger customers and certain baking companies purchasing their yeast at 14 cent price, but who consumed less than required quantity to entitle them thereto, and to others similarly securing more favorable price than that to which thus entitled, at so-called off-scale prices or concessions granted by central office, and not by division managers, extent of whose authority with smaller customers did not exceed more than 2 or 3 cent off-scale allowance, and not in good faith to meet competition, but under general price policy pursued to outstrip competitors;

With result that the effect of such price discriminations, as above set forth, was and might be substantially to lessen competition or tend to create monopoly in sale and distribution of bread and allied products in the respective lines of commerce in which they and their customers receiving benefit of such discriminatory prices were engaged, and to injure, destroy, or prevent competition with customers receiving benefit of such discrimination:

Held, That, through use of discriminatory prices as set forth in schedule in question, and otherwise as above set out and indicated, said corporation and subsidiary violated and were violating section 2 (a) of Clayton Act.

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

Mr. James I. Rooney and *Mr. Allen C. Phelps* for the Commission.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondents.

COMPLAINT [1]

Pursuant to the provisions of an Act of Congress, approved June 19, 1936, Public 692 (the Robinson-Patman Act), amending section 2 of an act approved October 15, 1914 (the Clayton Act), the Federal Trade Commission hereby issues its complaint against Standard Brands Incorporated and Standard Brands of California, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Brands Incorporated is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 595 Madison Avenue in New York, N. Y.

Respondent Standard Brands of California is a corporation organized and existing under and by virtue of the laws of the State of California, and is a wholly owned subsidiary of the respondent Standard Brands Incorporated, and its offices are the same as those of respondent Standard Brands Incorporated.

Respondents manufacture, sell, and distribute yeast in commerce to their customers located in the several States of the United States, causing said yeast, when sold, to be shipped from their respective factories in various States of the United States to the purchasers thereof located in the several States of the United States other than the States of origin of the shipments.

PAR. 2. In the course and conduct of their business as aforesaid, respondents are now, and for many years have been, in substantial competition with other corporations, partnerships, firms, and individuals engaged in the business of selling and distributing yeast in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, respondents, since June 19, 1936, have been, and are now, discriminating in price between different purchasers of their said product of like grade and quality by giving and allowing certain purchasers of bakers' yeast, used in the manufacture of bread and allied products, different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States.

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[1] Complaint published as amended by "Stipulation Amending Complaint and Answers, Approved by the Commission July 28, 1937," so as to include paragraph 3-A and amend paragraph 5.

The discrimination in price herein referred to, insofar as it applies to bakers' yeast, is brought about by the respondents selling said bakers' yeast to their customers upon the following terms:

	Cents per pound
50,000 pounds up per month	14
10,000 to 50,000 pounds per month	14½
7,500 to 10,000 pounds per month	16
5,000 to 7,500 pounds per month	17
3,000 to 5,000 pounds per month	18
1,500 to 3,000 pounds per month	19
1,000 to 1,500 pounds per month	20
500 to 1,000 pounds per month	21
300 to 500 pounds per month	22
150 to 300 pounds per month	23
1 to 150 pounds per month	25

PAR. 3-A. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, the respondents, since June 19, 1936, have been and are now discriminating in price between their purchasers of their product of like grade and quality by giving and allowing certain purchasers of bakers' yeast used in the manufacture of bread and allied products different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States. The discrimination in price herein referred to, insofar as it applies to bakers' yeast, is brought about by the respondents selling bakers' yeast to their customers within a given bracket as set forth in said schedule in paragraph 3 hereof at prices different from those charged other customers in the same bracket.

PAR. 4. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, respondents, since June 19, 1936, have been, and are now discriminating in price between different purchasers of their foil yeast of like grade and quality by giving and allowing certain purchasers of foil yeast different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the resale of their foil yeast within the United States.

The discrimination in price herein referred to, insofar as the same applies to the sale of their foil yeast, is brought about by the respondents selling foil yeast to their customers upon the following terms:

	Cents per pound
300 pieces or more per month	27
Less than 300 pieces per month	30

PAR. 5. The effect of said discrimination in price made by respondents, as set forth in paragraphs 3 and 3-A hereof, has been, or may be, substantially to lessen competition, or to injure, destroy, or prevent competition in the manufacture, sale and distribution of bread and allied products; and the effect of said discrimination has been, or may be, to tend to create a monopoly in said favored customers receiving said discriminatory prices from said respondents in the distribution of said products in the United States.

PAR. 6. The effect of said discrimination in price made by respondents, as set forth in paragraph 4 hereof, has been, or may be substantially to lessen competition, or to injure, destroy, or prevent competition in the sale and distribution of foil yeast; and the effect of said discrimination has been or may be, to tend to create a monopoly in said favored customers receiving said discriminatory prices from said respondents in the distribution of foil yeast in the United States.

PAR. 7. The foregoing alleged acts of said respondents are a violation of Subsection 2 (a) of section 1 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, Section 13), and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), 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 November 21, 1936, issued and served its complaint in this proceeding upon the respondents named herein, charging that said respondents were and had been discriminating in price between different purchasers from them of commodities of like grade and quality in commerce in violation of the provisions of section 2 (a) of said act. After the issuance of said complaint and the filing of the respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James I. Rooney, attorney for the Commission, before John W. Norwood, a trial examiner of the Commission theretofore duly desig-

nated by it, and in opposition to the allegations of the complaint by Theodore Kiendl and Edwin F. Blair of the firm of Davis, Polk, Wardwell, Gardner & Reed, attorneys for the above-named respondents. On June 15, 1937, said complaint was amended as of the date of its issuance, 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 as amended, the answers thereto as amended, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel as aforesaid; and the Commission having duly considered the same and being now fully advised in the premises, and being of the opinion that the respondents have been and are violating the provisions of section 2 (a) of said Clayton Act, now makes these its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Standard Brands Incorporated is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its offices and principal place of business at 595 Madison Avenue, New York, N. Y. Respondent Standard Brands of California is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at San Francisco, Calif., and it is a wholly-owned subsidiary and under the immediate direction and control of the respondent Standard Brands Incorporated.

PAR. 2. Respondents are engaged, among other things, in the business of manufacturing, selling and distributing bakers' yeast and foil yeast, producing approximately 120,000,000 pounds yearly, of which 10 percent to 12 percent is foil yeast and the remaining is bakers' yeast. Respondents are the largest manufacturers of yeast in the United States and enjoy between 55 percent and 65 percent of the total yeast business.

Method of Doing Business

PAR. 3. The yeast is manufactured by the respondents at its six factories located respectively at Peekskill, N. Y.; Chicago, Ill.; Pekin, Ill.; San Francisco, Calif.; Sumner, Wash.; and the District of Columbia.

The yeast, all of which is of like grade and quality, is manufactured daily at these factories after which "bakers' yeast" is molded into one pound and one-half pound cakes, wrapped, and then packed

in 50-pound cartons. Because of the perishable nature of the product, prompt delivery is essential, and, to accomplish this, the respondents maintain 444 agencies and subagencies so geographically located throughout the country that the yeast will reach these agencies by common carrier within 24 hours after its manufacture and from which the yeast will be delivered to respondents' customers within 24 hours from the time it arrives there. At the agencies there are refrigerated warehouses maintained exclusively for the storage of the yeast.

At the agencies the yeast, still in the 50-pound cartons, is placed upon trucks owned and operated by the respondents, from which it is delivered to some 25,000 customers located in practically every city, town, village, and community in the United States. The original cartons are broken by the driver-salesmen where the quantity to be delivered to a customer is less than 50 pounds.

PAR. 4. The daily production of yeast at the factories is based upon requisitions from the respective agencies, which in turn are based upon sales of the preceding month, standing orders, and other anticipated requirements from customers who are for the most part regular customers and whose daily requirements of yeast can be anticipated.

Respondents require no written contracts with their customers and there are no commitments that cannot be terminated by either respondents or their customers at will. However, as a general practice and except as otherwise shown hereafter, customers paying less than 25 cents per pound for yeast and who purchase all of their requirements from the respondents are obligated to purchase definite quantities monthly, in order to secure the yeast at the more favorable prices, as shown by the price schedules hereinafter referred to.

With the exception of a few wholesale routes yeast is delivered from the same trucks to both large and small customers.

PAR. 5. In the delivery of the yeast the driver-salesman takes daily route sheets made up at the agency headquarters, calls on the customers named therein, leaves the amount of yeast they require and either collects the cash or takes the customer's receipt according to his instructions. Charge customers who receipt for the yeast are billed directly by the agency at the end of the month. Driver salesmen solicit business from new and reclaimed prospects, but other salesmen or solicitors are employed by the respondents to sell respondent's products. Many of the routes operated from the respective agencies are exclusively bakery routes, while others are so-called mixed routes delivering yeast and other products sold by the respondents.

PAR. 6. Respondents sell their yeast under the direct supervision of the central office through its bakery merchandising department. This department operates through sixteen sales divisions located respectively at Cambridge, Mass.; Albany, N. Y.; Buffalo, N. Y.; New York, N. Y.; Philadelphia, Pa.; Washington, D. C.; Cincinnati, Ohio; Cleveland, Ohio; Chicago, Ill.; Kansas City, Mo.; Salt Lake City, Utah; Seattle, Wash.; San Francisco, Calif.; St. Louis, Mo.; Dallas, Tex.; and Birmingham, Ala. Through these divisions respondents control and direct the sales of the 444 agencies and subagencies previously referred to.

PAR. 7. In the course and conduct of their business respondents maintain a research laboratory where experiments are made in an effort to improve products made from its yeast and the results obtained are furnished respondents' customers. A force of experts is also maintained for the purpose of visiting bakeries and rendering such assistance as they can to respondents' customers in overcoming difficulties encountered by said customers in the manufacture of bread and allied products. Other promotional activities of the respondents consist in the sending of merchandising experts to their customers and instructing them how best to display their goods and attract customers. Respondents also conduct national advertising campaigns in periodicals and by radio to promote the increased consumption of bakers' bread; and, they also furnish advertising material to local bakers at actual cost which enables them to tie-in locally with the national advertising campaigns. Advertising ideas and suggestions are not charged for and the cuts and folders for which charges are made are based on purchases of large quantities by the respondents and the costs to the customers are much less than if produced locally. Respondents have maintained a school for bakers, giving free instruction to all customers interested. The services maintained by the respondents and previously referred to in this paragraph are offered as being free and at no extra charge to their customers.

PAR. 8. In the course and conduct of their business the aforesaid respondents are in competition with other corporations, partnerships, firms and individuals which manufacture and sell yeast for use in the manufacture of bread and allied products and which sell and ship their products from the States of origin of the shipment to various points in the United States other than the State of origin of the shipment. Among the larger competitors of the respondents are Anheuser-Busch Co., St. Louis, Mo.; National Grain Yeast Co., New York, N. Y.; Red Star Yeast Co., Milwaukee, Wis.; Consumers'

Yeast Co., San Francisco, Calif.; and The Federal Yeast Co., Baltimore, Md.

Competition of Customers

PAR. 9. The customers of the respondents are both large and small and manufacture and sell bread and allied products throughout the United States and these customers are competitively engaged with one another in the sale of said products, such competition extending to practically every city, town, village, and community in the United States. Among the customers of the respondents whose activities in the sale of bread and allied products are national in scope are The Great Atlantic & Pacific Tea Co., with 38 bakeries located east of the Rocky Mountains and with 14,000 retail stores located in practically all communities east of the Rocky Mountains and whose annual output of bread amounts to 446,000,000 pounds and whose yeast consumption approximates 5,000,000 pounds per year; the Continental Baking Co., with 78 bakeries located throughout the United States and with both wholesale and retail distribution of it products throughout the United States, the retail distribution being principally by house-to-house deliveries, and whose requirements of yeast approximate 5,000,000 pounds per year; the General Baking Corporation, with 77 bakeries throughout the United States and with a distribution system for its products similar to that of the Continental Baking Co., and whose requirements of yeast approximate 4,000,000 pounds per year. Among the customers of respondents whose activities in the sale and distribution of bread and allied products are sectional in scope are Hathaway Bakeries, Inc., with distribution of its products, both wholesale and retail, throughout the New England area; the First National Stores with retail distribution through some 2,400 stores located throughout the New England area. Among other customers of the respondents there are thousands of customers whose distribution of their products are purely local.

There are approximately 28,000 bakery concerns in the United States, each competing in the sale of its products both with competitors operating on a national scale, sectional scale, or purely locally. The smallest bakeries were thus in direct competition with the house-to-house and other selling by the larger concerns.

A pound of yeast is required in the manufacture of from 75 to 125 pounds of bread, depending upon the particular type of dough.

Price Scales

PAR. 10. For many years prior to and since June 19, 1936, respondents, as a general practice and except as otherwise shown here-

after, have been and now are selling bakers' yeast as aforesaid to their customers at different prices, as set forth in the following schedules:

Schedule A

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150	25	3,000 to 5,000	18
150 to 300	23	5,000 to 7,500	17
300 to 500	22	7,500 to 10,000	16
500 to 1,000	21	10,000 to 50,000	14½
1,000 to 1,500	20	50,000 and up	14
1,500 to 3,000	19		

The above prices apply to all customers in the following areas:

East:

South of Canadian Line and North of North Carolina.

West:

Arkansas	Kentucky	North Dakota
Illinois	Michigan	Ohio
Indiana	Minnesota	Oklahoma
Iowa	Missouri	South Dakota
Kansas	Nebraska	Memphis, Tenn.
Wisconsin	West Virginia	

Pacific Coast:

California	Montana	Utah
Colorado	Nevada	Wyoming
Idaho	Oregon	Washington

Schedule B

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150	27	3,000 to 5,000	19
150 to 300	25	5,000 to 7,500	18
300 to 500	24	7,500 to 10,000	17
500 to 1,000	22	10,000 to 50,000	14½
1,000 to 1,500	21	50,000 and up	14
1,500 to 3,000	20		

The above schedule applies to all customers located in the following area: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee (except Memphis).

Schedule C

Pounds per month	Cents per pound	Pounds per month	Cents per pound
6 to 60	30	2,000 to 3,000	21
10 to 150	28	3,000 to 5,000	20
150 to 300	27	5,000 to 7,500	18
300 to 500	25	7,500 to 10,000	17
500 to 1,000	24	10,000 to 50,000	14½
1,000 to 1,500	23	50,000 and up	14
1,500 to 2,000	22		

The above schedule applies to all customers located in Artesia, N. Mex., and the State of Texas, except El Paso.

Schedule D

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 60	30	1,500 to 2,000	22
60 to 150	28	2,000 to 3,000	21
150 to 300	27	3,000 to 5,000	20
300 to 500	25	5,000 to 10,000	19
500 to 1,000	24	10,000 to 50,000	17½
1,000 to 1,500	23	50,000 and up	17

The above schedule applies to all customers located in Albuquerque, N. Mex., and El Paso, Tex.

Schedule E

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150	27	1,500 to 3,000	21
150 to 300	26	3,000 to 5,000	20
300 to 500	25	5,000 to 10,000	19
500 to 1,000	24	10,000 to 50,000	17½
1,000 to 1,500	22	50,000 and up	17

The above schedule applies to all customers in the State of Arizona.

The findings herein are confined to the sales of bakers' yeast as set forth in schedule A; however, reference is made to the schedule of prices, as set forth in Schedules B, C, D, and E, because the respondents, in submitting their justification for the price differentials as shown in schedule A, took into consideration the costs in those areas where the prices set forth in said Schedules B, C, D, and E were in effect, to which, references will be made hereinafter.

Respondents do not publish any of the foregoing price lists and no customer is acquainted with their contents by the respondents. Before any price is quoted at which a customer may purchase bakers' yeast from the respondents, the customer must first indicate to the respondents what his monthly requirements will be. In most cases respondents know the monthly requirements of a prospective customer.

The prices at which respondents sell bakers' yeast according to the foregoing schedules of prices do not necessarily depend upon the quantities actually purchased but upon the monthly requirements of yeast of the respective customers; that is, a customer whose monthly requirements of yeast might be 1,400 pounds and who purchases all of such requirements from respondents would pay, according to scale,

20 cents per pound; however, if the customer purchased only part of his requirements from the respondents he would still pay 20 cents per pound regardless of what portion of his requirements he so purchased.

Discriminations

PAR. 11. All further reference to price scales or price schedules, unless otherwise mentioned, will refer to schedule A of paragraph 10.

According to the scale of prices at which respondents sell their bakers' yeast, using 25 cents per pound as a base price, the graduating discounts off base price, as represented by the separate price brackets are shown in the following table:

Monthly quantity brackets (pounds)	Price scale	Discount equivalent off base price of 25 cents per pound	Monthly quantity brackets (pounds)	Price scale	Discount equivalent off base price of 25 cents per pound
	Cents per pound (base price)	*Percentage*		*Cents per pound (base price)*	*Percentage*
1 to 149	25		3,000 to 4,999	18	28
150 to 299	23	8	5,000 to 7,499	17	32
300 to 499	22	12	7,500 to 9,999	16	36
500 to 999	21	16	10,000 to 49,999	14½	42
1,000 to 1,499	20	20	50,000 and up	14	44
1,500 to 2,999	19	24			

If 14 cents per pound were taken as the base price, the increase in price between the next quantity brackets ranges from approximately 3 percent between the 14-cent and the 14½-cent customers to 78.5 percent between the 14-cent and 25-cent customers.

As a result of selling bakers' yeast, according to this price scale, customers purchasing at the most favorable price of 14 cents per pound, such as the Great Atlantic & Pacific Tea Co. which purchases 5 million pounds in 1 year, in the course of that time they pay the following amounts less for the quantities purchased by them than is paid for the same quantity purchased and delivered to customers in the other quantity brackets.

$25,000 less than 14½ cent customers
100,000 less than 16 cent customers
150,000 less than 17 cent customers
200,000 less than 18 cent customers
250,000 less than 19 cent customers
300,000 less than 20 cent customers
350,000 less than 21 cent customers
400,000 less than 22 cent customers
450,000 less than 23 cent customers
550,000 less than 25 cent customers

By this method of selling bakers' yeast, customers paying the highest price are discriminated against with respect to all other customers, while those customers paying the lowest prices, such as the chains operated on a national scale, are given the benefit of the discrimination as against all other customers of the respondents. .

Furthermore, by selling according to this graduated scale of prices the medium-sized independent baker is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors. In all instances the greatest discrimination is in favor of the most powerful competitor.

In addition, the graduated scale of prices is so fixed by respondents that a customer using approximately 10,000 pounds of yeast per month and paying therefor either 16 cents or 14½ cents per pound must increase his monthly consumption of yeast at least by 40,000 pounds, or his monthly output of bread by 4 million pounds, in order to secure the 14-cent price, yet the respondents, according to their own report showing the costs of sale and delivery of bakers' yeast (to which reference will be made hereinafter), show that they do not deliver 50,000 pounds in any 1 month to any separate factory or bakery of any respective customer.

PAR. 12. By selling bakers' yeast as the respondents do, even assuming that the differentials in price as set forth in said schedule A could be justified by reason of the differences in the costs of delivering the respective quantities as set forth in said schedule, they are discriminating in price between different purchasers by deviating from this schedule. Such discriminations in price are as follows:

(*a*) Between customers who purchase all of their requirements of yeast from the respondents and those who purchase some but not all of their requirements of yeast from the respondents.

(*b*) Between customers who purchase some but not all of their requirements of yeast from respondents and other customers who purchase some but not all of their requirements of yeast from the respondents.

(*c*) Between customers who purchased any or all of their requirements of yeast from respondents and others who also purchase any or all of their requirements of yeast from respondents, both of whom are in the same quantity bracket, or in other words, those who purchase "off scale"; and,

(*d*) By selling at prices based on total consumption irrespective of the number or quantity of the individual deliveries.

As to (*a*), that is, discrimination in price between customers who purchase all of their requirements of yeast from the respondents and those who purchase part of their requirements of yeast from the

respondents, for example, a customer whose requirement of yeast is 4,500 pounds a month and who purchased this entire amount from respondents, pays according to scale, 18 cents per pound, whereas, another customer whose requirements of yeast are 7,500 pounds per month and who purchased only 4,500 pounds from the respondents pays only 16 cents per pound for the 4,500 pounds purchased from the respondent. Likewise, this same customer would be discriminated against with respect to another customer having the same monthly requirements of 4,500 pounds but who only purchased 500 pounds from the respondents. Such a customer, because his monthly requirements of yeast were 4,500 pounds, would pay the respondents only 18 cents per pound for the 500 pounds purchased from them.

As to (*b*), that is, between customers who purchase some, but not all, of their requirements of yeast from the respondents, and other customers who also purchase some, but not all, of their requirements of yeast from the respondents, discriminations are brought about in the following manner: The customer whose requirements are 4,500 pounds per month and who purchases 500 pounds of this from the respondents, pays according to scale for that 500 pounds 18 cents per pound, while another customer whose requirements are 1,000 pounds per month and who purchases from the respondents only 500 pounds pays the respondents 20 cents per pound for that 500 pounds because his requirements are only 1,000 pounds per month.

As to (*c*), respondents discriminate between certain customers within a definite quantity bracket by selling to some customers at so-called off-scale prices. The larger customers purchasing their yeast at the 14-cent price, by consuming less than the required quantity to entitle them to this price, are granted this concession only by the central office. Division managers may sell below scale with smaller customers but never more than 2 cents to 3 cents off scale. The larger customers of the respondents purchasing at off-scale prices are Grocers Baking Co., Louisville, Ky.; Hathaway Bakeries, Inc., Cambridge, Mass.; National Baking Co. and Peterson Baking Co. of Omaha, Nebr.; Pechter Baking Co., New York, N. Y.; and M & M Baking Co., Dover, N. H. About 16 percent of the customers served by the respondents' agency at Minneapolis, Minn., purchase at off-scale prices, while in the New York City area about 35 percent of the customers in the 3,000 to 5,000 pound class pay less than the price scale of 18 cents per pound.

As to (*d*), discrimination is brought about by respondents selling to their customers on the basis of total consumption or purchases irrespective of the number or quantity of the individual deliveries. The Great Atlantic & Pacific Tea Co. had a total national consump-

tion per month of respondents' yeast ranging from 451,550 pounds for July 1936, to 403,625 pounds for January 1937. These amounts were delivered from the respondents' various agencies to 37 bakeries in as many locations from Louisiana to Iowa and Maine, in quantities ranging from 30,400 pounds delivered at Pittsburgh, Pa., in July 1936, to 2,200 pounds delivered at New Orleans, La., in September 1936. At no individual bakery of this customer is 50,000 pounds delivered in 1 month. In proportion to the quantities delivered to the respective bakeries, according to the scale of prices as set forth in schedule A, the quantities delivered to 23 of the bakeries should be in the 14½-cent price bracket, to 8 in the 16-cent price bracket, to 4 in the 17-cent price bracket, to 1 in the 18-cent price bracket and to 1 in the 19-cent price bracket. However, this customer pays 14 cents per pound for all of its yeast.

The Continental Baking Corporation had a total national consumption per month of respondents' yeast in quantities ranging from 613,885 pounds for December 1936, to 565,694 for August 1936. This was delivered from respondents' various agencies monthly from July 1936, to January 1937, to 71 bakeries of this customer in as many different locations from Massachusetts to California and Texas in quantities ranging from 45,700 pounds delivered at Detroit, Mich., during December 1936, to 2,515 pounds delivered at Waterbury, Conn., in November 1936. At no one of these bakeries was 50,000 pounds delivered in 1 month. Based upon the quantities delivered at the respective 71 bakeries, according to price scale as set forth in schedule A, the quantities delivered to 21 of the bakeries should be in the 14½-cent price bracket, to 9 in the 16-cent price bracket, to 20 in the 17-cent price bracket, to 18 in the 18-cent price bracket and to 3 in the 19-cent price bracket. However, this customer purchases its yeast at 14 cents per pound.

The Federal Bakeries, Inc., with 78 branches located over the entire country have purchased their yeast at a price of 15 cents per pound although the monthly deliveries to the respective branches do not exceed 200 pounds.

By this method of selling yeast, independent dealers operating a single plant are obligated to pay a great deal more for yeast than large chains operating several bakeries and who, with a single plant in the same area as the independent, may receive the same quantities of yeast at that particular branch as the independent dealer receives. The extent to which such a discrimination reaches is indicated in the case of Federal Bakeries, Inc., who, because it has 78 bakeries located over the entire country, and its total national consumption is in excess of 10,000 pounds, purchases its yeast at 15 cents a pound, although

the quantity delivered to the respective branches does not exceed 200 pounds per month, whereas individual customers purchasing only 200 pounds per month are obligated to pay, according to scale, 23 cents per pound. Likewise, the Continental Baking Co., with 71 bakeries located over the entire country, under this method, in the course of 1 year made a saving in excess of $116,000. That is, assuming that this customer paid the prices set out on the price scale for the quantities delivered at its respective branches, it would have paid for its yeast $116,000 more than it did pay in the course of a year. There was in this case a discrimination in favor of Continental Baking Co. of $116,000 as against customers paying the scale prices. The same advantages were extended by respondents to those chains whose operations are sectional in scope, such as Hathaway Bakeries, Inc., and the First National Stores.

Effects of discrimination

PAR. 13. Respondents' scale prices had the effect of enabling large bakeries and chains to make large and substantial savings which they may employ in the keen competition shown to exist between them and the smaller bakeries. The differential in the prices charged for yeast results in increasing the cost of producing a single pound of bread by one-seventh of a cent as between the baker paying 14 cents per pound for yeast and the one paying 25 cents per pound. This difference was shown to be substantial since the average margin of profit even for a large producer is only three-tenths of a cent per pound, that is, the effect of the price differential is to increase the profit of the large baking approximately one-third and produce a competitive disadvantage to the bakery equal to, if not in excess of, this proportion. While this disparity appears greater per unit as between the extreme price brackets, its effect is increased in total volume as between the medium and lower price brackets, and the baker taking 1,499 pounds of yeast per month and paying the scale price of 20 cents per pound would be discriminated against in sum of approximately $1,080 per year as compared with the baker who pays 14 cents per pound for yeast. In this case, there is a smaller per-loaf cost differential but a larger total amount is involved.

The advantage to the purchasers of yeast at lower prices may be reflected in many different ways in the lessening or injuring of competition, inasmuch as it can be used for periodical reductions in price or increase in service, sales effort, and sales appeal, all of which operate to the disadvantage of the bakers against whom these discriminations are employed. While the one-seventh of a cent cost differential

was shown to be a maximum between customers paying the highest and the lowest prices, the evidence shows, and we find, that this maximum differential obtained between a substantial number of large and small bakers and that a smaller but still substantial cost differential obtained between a large number of other competing bakeries. In view of the fact that bread is sold in large quantities and on close margins of profit, as shown abundantly in the record and elsewhere in these findings, such margins are substantial and are material and vital factors of competition.

The respondents do not deny selling bakers' yeast at the differentials in price charged in the complaint, and the evidence shows, and we find, that the effect of such discriminations in price is and may be substantially to lessen competition and tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondents and their customers, receiving the benefit of such discriminatory prices, are engaged, and to injure, destroy or prevent competition with customers receiving the benefit of such discrimination. We find that the differentials in price at which respondents sell their bakers' yeast are not shown to be such as make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such bakers' yeast is to such purchasers sold or delivered.

Respondents, by selling bakers' yeast as they do, even assuming that such a price scale as set forth in Schedule A could be justified by reason of the differences in the costs of delivering the differing quantities to different purchasers, are discriminating in price between different purchasers of bakers' yeast because respondents are not selling at prices based upon the actual quantity or volume delivered to the respective purchasers according to said price scale but are deviating therefrom (1) by selling at prices (*a*) based upon the monthly requirements of the individual purchaser rather than upon the actual quantity or volume purchased monthly from the respondents, (*b*) based upon the total monthly requirements or purchases of the respective customers instead of upon the definite quantity or volume delivered monthly to the separate plants, bakeries, factories, or warehouses of the respective customers, and (2) by selling the same quantity or volume monthly to different purchasers at different prices; and we find that the effect of such price discrimination by the respondents is, and may be, substantially to lessen competition or tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondents and their customers, receiving the benefit of such discriminatory prices, are engaged, and to injure, de-

stroy, or prevent competition with customers receiving the benefit of such discrimination.

PAR. 14. The defense of meeting competition raised by the respondents applies only to those cases where the respondents sell at the so-called "off-scale" prices or to discrimination referred to in subsection (*c*) of paragraph 12 hereof. While it is true that in some instances respondents did sell at off-scale prices where there was keen competition and where prices lower than their scale were reported by customers to have been offered by competitors, it was not shown that these were particular prices made by respondents in good faith to meet similar quotations theretofore made by competitors. Evidence offered by respondents to rebut the prima facie case of discrimination shows clearly that competitive and other considerations were the bases of its general price policy pursued in a process of outstripping competitors, and it was not shown that the price situations in which respondents found themselves were not of their own making. Respondents, by reason of their service and goodwill, were able to secure more for their yeast than could most of their competitors. They are the largest manufacturers of bakers' yeast in the United States and do from 55 percent to 65 percent of the total business therein, and the evidence shows that their off-scale, as well as scale, prices conform to a general policy of price discrimination whereby subordinates were permitted to sell below scale within fixed limits, and it does not appear that such officials were limited to no more than the competitive price. The evidence shows numerous instances of off-scale selling at prices which do not appear to have been made to meet the quotations of competitors. Good faith in these scale departures does not affirmatively appear and in the circumstances shown, involving the employment of an unjustified price scale, it can not be presumed.

PAR. 15. Respondents sell foil yeast according to the following price scale: 300 pieces and up per month, 27 cents a dozen; under 300 pieces per month, 30 cents per dozen. Unlike the graduating scale at which respondents sell bakers' yeast, where the favorable price is beyond reach of all but a select few of its customers, here the favorable price is available to the great majority of the customers of the respondents. The effect of the discrimination, insofar as it relates to foil yeast, ranges from a minimum of 7½ cents to a maximum of 60 cents per month. We find that this discrimination does not have the effect substantially to lessen competition or tend to create a monopoly in the customers receiving the discriminatory price or to injure, destroy or prevent competition with customers receiving the lower price.

PAR. 16. On June 14, 1937, after the Commission had denied a petition filed by the respondents requesting that the Commission make an

interlocutory finding upon the evidence submitted up to that time, the respondents elected not to offer any evidence of the justification of the price differentials as set forth in schedule A heretofore referred to in paragraph 10 hereof.

Pursuant to the rules of the Commission, hearings were then closed and the trial examiner's report upon the evidence was duly filed and brief of counsel for the Commission in support of the allegations of the complaint was duly filed.

Immediately prior to the expiration of the time within which brief on behalf of the respondent was due, the respondents, on September 17, 1937, filed with the Commission a petition requesting that the proceeding be reopened and that they be permitted to offer testimony and other evidence to the effect that the differentials in price at which bakers' yeast was sold were justified by differences in cost. Respondents' petition was allowed by the Commission, and, on October 4, 1937, proceedings were reopened to permit the reception of such additional testimony and other evidence. Whereupon, the respondents offered in evidence a "Report on Examination of Costs of Sale and Delivery Applicable to Bakers' Yeast." (Res. Ex. 33.)

PAR. 17. The cost of sale and delivery applicable to bakers' yeast, as shown in said report, referred to in paragraph 16 hereof, include:

I. Costs of sale and delivery incurred at Divisions and Agencies throughout the United States, including—

(*a*) Route selling and Delivery Costs, (*b*) Solicitation Costs; and, (*c*) Service Costs, (hereinafter referred to as Direct Costs).

II. General Administrative Costs incurred at Divisions and Agencies throughout the United States (hereinafter referred to as Indirect Costs).

In addition to the above items of cost, respondents include a small item of home-office expense, representing salaries of bakery consultants. However, they do not include manufacturing costs, transportation costs, and home-office general administrative costs (including cost of advertising) except the small item representing bakery consultants' salaries.

The months of January, February, and March, 1937, were selected by respondents as a test period, as shown in their report. Sales and costs, as shown therein and referred to hereinafter, represent average figures for 1 month based upon the 3 months operations. In addition, certain time studies and cost studies were made by the respondents for the periods other than the 3 months period, but the underlying data thus obtained were used as a basis for making certain allocations of said average monthly costs, as described later herein.

The costs, as computed by respondents and shown in their report, applicable to serving customers whose monthly purchases of yeast fall into the separate quantity-price brackets, are shown below in comparison with the prices applicable to the respective quantities:

Bracket	Quantity (pounds)	Cost per pound	Sales price
		Cents per pound	*Cents per pound*
1	1 to 149	11.7654	25
2	150 to 299	10.0250	23
3	300 to 499	7.7134	22
4	500 to 999	5.7144	21
5	1,000 to 1,499	4.8942	20
6	1,500 to 2,999	2.5416	19
7	3,000 to 4,999	2.0829	18
8	5,000 to 7,499	1.4368	17
9	7,500 to 9,999	1.4735	16
10	10,000 to 49,999	.9214	14½
11	50,000 and up	(1)	14

[1] As the costs shown above for each bracket were computed on the basis of sales to individual bakeries, no costs appear in bracket 11 "50,000 pounds and up" because no individual bakery establishment purchases from the company as much as 50,000 pounds of yeast in 1 month.

In addition to bakers' yeast the respondents sell many other products including foil yeast, coffee, tea, gelatin, frozen eggs, diamalt, baking powder, and other products. Therefore, in making their cost study they group all products into two principal classes which they define as "Bakery Products" and "Grocery Products." The respective divisions and subdivisions of the two groups of products as classified by the respondents are shown in tabular form as follows:

Bakery Products

Pound Yeast:
- Personal delivery
- Shipping Sales
- Sales to Grocers

Bulk Products—
(including Arkady, Diamalt, Frozen Eggs and Fermaloid)

Package Products—
(including Fleischmann Baking Powder and other leaveners)

Grocery Products

Foil Yeast

Bulk Products—Tea

Package Products—
(including Royal Baking Powder, Dr. Price Baking Powder, Desserts, Coffee and Tea)

The term "Bakers' Yeast," as used by respondents, means "Pound Yeast" as distinguished from "Foil Yeast." Respondents sell "Bakers' Yeast" principally through their personal-delivery service but other minor sales are made which respondents style "Shipping Sales" and "Sales to Grocers." However, the term "Bakers' Yeast" is used herein to mean that portion of pound yeast which is sold through the personal-delivery service.

Total Costs of Sale and Delivery and its Allocation by Respondents between (a) Bakery Products and (b) Grocery Products

The total average monthly costs of sale and delivery, based on 3-months' operations, amounted to $978,793.38 (in the aggregate).

Records are not kept by respondents which show all of the costs of sale and delivery of each of the two general classes of products, nor of each of the separate products, shown in the foregoing tabulation; but respondents' records do show the total sales of each of the separate products. Therefore, for the purpose of allocating the total costs to the various products, respondents have applied certain predetermined percentages (estimated percentages) to average monthly dollar sales. The percentages thus applied are as follows:

	Percent
Yeast	23
Bulk Products	7.25
Package Products	11.3

The total average monthly sales, based on 3 months' operations, amounted to $6,518,015.44, the detail of which is shown in the following tabulation:

AVERAGE MONTHLY SALES

	Dollar sales	
Bakery Products:		
Pound Yeast:		
Personal Delivery	$1,413,095.03	
Shipping Sales	35,368.53	
Sales to Grocers	26,277.25	
Bulk Products	749,367.56	
Package Products	68,505.22	
Total Bakery Products		$2,292,613.59
Grocery Products:		
Foil Yeast	710,390.63	
Bulk Products	3,878.26	
Package Products	3,511,132.96	
Total Grocery Products		4,225,401.85
Total Sales		6,518,015.44

The predetermined precentages were applied to the average monthly sales whereby respondents made an estimate of the costs of sale and delivery applicable to each product. The details of this procedure, referred to hereinafter as "First Step in Respondents' Cost Allocations," are shown in the following tabulation:

FIRST STEP IN RESPONDENTS' COST ALLOCATIONS

	Dollar sales	Predetermined percentages applied to dollar sales	Estimated costs
BAKERY PRODUCTS			
Pound yeast:			
Personal delivery	$1,413,095.03	23	$325,011.86
Shipping sales	35,368.53	23	8,134.76
Sales to grocers	26,277.25	23	6,043.77
Bulk products	749,367.56	7.25	54,329.15
Package products	68,505.22	11.3	7,741.09
Total	2,292,613.50		401,260.63
GROCERY PRODUCTS			
Foil yeast	710,390.63	23	163,389.84
Bulk products	3,878.26	7.25	281.17
Package products	3,511,132.96	11.3	396,758.02
Total	4,225,401.85		560,429.03
Grand total	6,518,015.44		961,689.66

After applying the predetermined percentages to dollar sales of each particular product as shown in the foregoing tabulation, it was found that the total estimated costs of all products amounted to $961,689.66, or $17,103.72 less than the total known cost of $978,793.38 (aggregate only for all products). This difference between the total known costs and the total estimated costs was made up by increasing the estimated costs for each product by approximately 1.78 percent, the ratio which $17,103.72 bears to $961,689.66. The details of this procedure, referred to hereinafter as "Second Step in Respondents' Cost Allocations," are shown in the following tabulation:

SECOND STEP IN RESPONDENTS' COST ALLOCATIONS

	Estimated costs	Add 1.78 percent of estimated costs	Final estimated allocation to products of total average monthly costs
BAKERY PRODUCTS			
Pound yeast:			
Personal delivery	$325,011.86	$5,780.36	$330,792.22
Shipping sales	8,134.76	144.68	8,279.44
Sales to grocers	6,043.77	107.49	6,151.26
Bulk products	54,329.15	966.25	55,295.40
Package products	7,741.09	137.67	7,878.76
Total	401,260.63	7,136.45	408,397.08
GROCERY PRODUCTS			
Foil yeast	163,389.84	2,905.90	166,295.74
Bulk products	281.17	5.00	286.17
Package products	396,758.02	7,056.37	403,814.39
Total	560,429.03	9,967.27	570,396.30
Grand total	961,689.66	17,103.72	978,793.38

Following the estimated allocations of the total average monthly costs to the separate products (Second Step of Respondents' Cost

Allocations), respondents made in independent study and analysis (independent of the predetermined percentages) of the respective costs applicable to the two general classes of products, to wit, bakery products and grocery products. As a result of this independent study and analysis, respondents earmarked $634,062.95 of the total average monthly costs ($978,793.38), and applied the same directly to the two classes of products. This direct allocation of $634,062.95 of the total average monthly cost is referred to hereinafter as "Third Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

THIRD STEP IN RESPONDENTS' COST ALLOCATIONS

	Bakery products	Grocery products	Total
Agency Delivery	$66, 090. 71	$232, 992. 27	$299, 082. 98
Agency Bakery Merchandising	23, 504. 21		23, 504. 21
Agency Grocery Merchandising		32, 162. 16	32, 162. 16
Agency Administration	49, 853. 48	6, 995. 34	56, 848. 82
Automobiles	41, 771. 05	101, 942. 38	143, 713. 43
Division Bakery Merchandising	44, 956. 09		44, 956. 09
Division Grocery Merchandising		28, 365. 83	28, 365. 83
Division Administration	2, 497. 53	2, 931. 90	5, 429. 43
Total	228, 673. 07	405, 389. 88	634, 062. 95

After the allocation of $634,062.95 to bakery products and grocery products as a result of the independent study and analysis by respondents (Third Step of Respondents' Cost Allocations), there remained an unallocated amount of $344,730.43 as shown in the third column of the following tabulation. The tabulation will be referred to hereinafter as "Fourth Step in Respondents' Cost Allocations":

FOURTH STEP IN RESPONDENTS' COST ALLOCATIONS

	Total actual average costs	Portion of total costs—applied directly (direct costs)	Portion of total costs—not allocated directly (indirect costs)
Agency Stock Rooms	$34, 294. 63		$34, 294. 63
Agency Delivery	323, 385. 59	$299, 082. 98	24, 302. 61
Agency Bakery Merchandising	23, 504. 21	23, 504. 21	
Agency Grocery Merchandising	32, 162. 16	32, 162. 16	
Agency Administration	182, 506. 72	56, 848. 82	125, 657. 90
Division Stock Rooms	17, 404. 33		17, 404. 33
Automobiles	144, 570. 63	143, 713. 43	857. 20
Division Bakery Merchandising	44, 956. 09	44, 956. 09	
Foreign Commissions	297. 67		297. 67
Division Grocery Merchandising	28, 365. 83	28, 365. 83	
Division Administration	147, 345. 52	5, 429. 43	141, 916. 09
Total	978, 793. 38 (100. 00%)	634, 062. 95 (64. 78%)	344, 730. 43 (35. 22%)

In order to allocate the total indirect costs, to wit, $344,730.43 between the two general classes of products, respondents, having

already allocated, by applying the percentages, $408,397.08 as the costs of sale and delivery of all bakery products and $570,396.30 as the costs of sale and delivery of all grocery products, simply deducted from these respective amounts the $228,673.07 and $405,389.88 (the amounts they found to be applicable to these two classes of products, respectively, by an independent study and analysis). Thus the allocations of this $344,730.43 resulted in $179,724.01 of it being applied to bakery products and $165,006.42 to grocery products. This procedure is referred to hereinafter as "Fifth Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

FIFTH STEP IN RESPONDENTS' COST ALLOCATIONS

	Bakery products	Grocery products	Total
Total costs of sale and delivery as allocated to the two classes of products by applying predetermined percentages to dollar sales (First and Second Steps)	$408,397.08 (41.72%)	$570,396.30 (58.28%)	$978,793.38 (100.00%)
Portion of said costs applicable to the two classes of products as determined by respondents' independent study and analysis (Third Step)	228,673.07 (36.06%)	405,389.88 (63.94%)	634,062.95 (100.00%)
Balance of said costs—allocated to the two classes of products by difference	179,724.01 (52.13%)	165,006.42 (47.87%)	344,730.43 (100.00%)

Allocation of Costs to Bakers' Yeast

Respondents made no independent study and analysis for the purpose of allocating costs to bakers' yeast, which is only one of the several products included in the bakery-product classification. The allocation of costs to this one product, bakers' yeast, was made only by applying said predetermined percentages to dollar sales, whereby respondents allocated $330,792.22 of the total costs of sale and delivery to bakers' yeast (First and Second Steps in Respondents' Cost Allocations).

This item of $330,792.22 was subdivided by respondents into "Direct Costs," $192,457.95, and "Other Costs" (Indirect Costs), $138,334.27.

In order to apply direct costs of $192,457.95 to personal-delivery bakers' yeast, respondents made a segregation of that portion of the total direct costs ($228,673.07) applicable to the bakery-product classification as determined by their independent study and analysis (Third Step in Respondents' Cost Allocations). To such costs ($228,673.07), respondents applied a percentage, with slight variations, which the total amount allocated to bakers' yeast (aggregating

$345,222.92)[1] bore to the total amount (aggregating $408,397.08) allocated to the bakery-product classification; such amounts having been previously determined by applying predetermined percentages to dollar sales (First and Second Steps in Respondents Cost Allocations). This procedure is referred to hereinafter as "Sixth Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

SIXTH STEP IN RESPONDENTS' COST ALLOCATIONS

	Total direct costs applicable to bakery products	Percentages applied to direct costs of bakery products	Portion of direct costs of bakery products allocated to personal-delivery bakers' yeast
Route selling and delivery costs	$93,434.02	83.63	$78,140.38
Solicitation costs	122,283.67	84.53	103,366.39
Service costs	12,955.38	84.53	10,951.18
Total	228,673.07	84.16	192,457.95

After allocating $192,457.95 of Direct Costs to bakers' yeast there remained a difference of $138,334.27 between such Direct Costs so applied and the estimated total cost of $330,792.22 applied to bakers' yeast by the use of the predetermined percentages at the outset of respondents' study. Therefore, this amount ($138,334.27) was assigned by respondents as such part of their unallocated costs (Indirect Costs) to bakers' yeast. In other words, this amount was arrived at *by difference* in the same manner as the total "Indirect Costs" had been previously allocated to the two general classifications of products, bakery products and grocery products as previously described herein.

This procedure is referred to hereinafter as "Seventh Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

SEVENTH STEP IN RESPONDENTS' COST ALLOCATIONS

Total Costs of Sale and Delivery as allocated to Personal-Delivery Bakers' Yeast by applying predetermined percentages to dollar sales (First and Second Steps)	$330,792.22
Portion of Direct Costs which respondents have allocated to Personal-Delivery Bakers' Yeast (Sixth Step)	192,457.95
Balance determined *by difference*, styled by respondents as Other Costs (Indirect Costs)	138,334.27

[1] Including sales through the personal-delivery service, shipping sales, and sales to grocers.

Allocation of the various elements of costs to the quantity-price brackets

As previously set forth herein, a cost of $330,792.22 was applied by respondents to sale and delivery of bakers' yeast at the outset by the use of predetermined percentages. Likewise, by the use of predetermined percentages (used directly and indirectly), respondents separated this allocated portion of $330,792.22 into component parts as follows:

I. Direct Costs:	
(a) Route Selling and Delivery Costs	$78,140.38
(b) Solicitation Costs	103,366.39
(c) Service Costs	10,951.18
Total Direct Costs	192,457.95
II. Other Costs (Indirect Costs)	138,334.27
Total Costs applied to Sale and Delivery of Bakers' Yeast	330,792,22

Respondents' next step was to allocate the above costs to the groups of customers whose monthly purchases of bakers' yeast fell in the respective quantity-price brackets.

The items of direct costs making up the total of $192,457.95 applied to bakers' yeast, as shown above, were allocated and applied to the respective quantity-price brackets by time studies and call studies as follows:

Item I (*a*) $78,140.38, route selling and delivery costs, applied to bakers' yeast, was apportioned according to time of stops of the driver-salesmen and trucks at customers' premises as determined by stop-watch studies and collected data for 6 days. These data showed the aggregate and proportions of time as between the purchasers of the various bracket-quantities of yeast. The apportionment of this item will be shown later in tabular form.

Item I (*b*) $103,366.39, Solicitation costs, applied to bakers' yeast, was apportioned according to number of calls on customers by solicitors, foremen, and managers. The apportionment of this item will be shown later in tabular form.

Item I (*c*) $10,951.18, Service costs, applied to bakers' yeast, was apportioned according to a study of actual time spent on calling on customers by service men. The apportionment of this item will be shown later in tabular form.

Following the allocations of Item I, Item II Other Costs (Indirect Costs), $138,334.27, was allocated to the quantity-price brackets in the same proportions in which the total direct costs, I (*a*), I (*b*), and

I (*c*) combined, had been allocated as described above. The apportionment of this item will be shown later in tabular form.

Before transforming the total so-called Direct and Indirect Costs into costs per pound, respondents apportioned $3,316.26, representing bakery consultants' salaries and expenses, to the quantity-price brackets on the basis of a time study.

The apportionments to quantity-price brackets of all items of cost applied to bakers' yeast by respondents are referred to hereinafter as "Eighth Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

EIGHTH STEP IN RESPONDENTS' COST ALLOCATIONS

[Respondents' Allocations of Costs to Quantity-Price Brackets]

Bracket number	Quantity-price brackets (pounds)	Route selling and delivery costs [1]	Solicitation costs [2]	Service costs [3]	Total direct costs	Total indirect costs [4]	Total cost of sale and delivery applied to bakers' yeast by respondents [5]	Bakery consultants' services [6]	Total costs applied to bakers' yeast by respondents
		Sixth step	Sixth step	Sixth step	Sixth step	Seventh step	Second step		
1	1-149	$25,365.93	$32,570.17	$853.74	$58,789.84	$42,256.76	$101,046.60	$44.73	$101,091.33
2	150-299	10,643.45	22,848.22	1,293.00	34,784.67	25,002.41	59,787.08	66.80	59,853.88
3	300-499	6,538.95	13,917.84	1,407.12	21,863.91	15,715.27	37,579.18	73.34	37,652.52
4	500-999	6,828.23	11,581.86	2,305.00	20,715.09	14,889.52	35,604.61	158.20	35,762.81
5	1,000-1,499	3,526.27	5,390.85	1,192.87	10,109.99	7,266.82	17,376.81	166.77	17,543.58
6	1,500-2,999	5,793.22	5,141.36	1,769.93	12,704.51	9,131.70	21,836.21	337.99	22,174.20
7	3,000-4,999	5,322.39	4,431.92	841.90	10,596.21	7,616.31	18,212.52	643.44	18,855.96
8	5,000-7,499	4,147.62	2,812.25	502.77	7,462.64	5,363.97	12,826.61	418.23	13,244.84
9	7,500-9,999	4,154.95	1,950.43	446.79	6,552.17	4,709.55	11,261.72	246.76	11,508.48
10	10,000-49,999	5,819.37	2,721.49	338.06	8,878.92	6,381.96	15,260.88	1,160.00	16,420.88
11	50,000 and up								
		78,140.38	103,366.39	10,951.18	192,457.95	138,334.27	330,792.22	3,316.26	334,108.48

[1] Allocated to brackets on basis of time study for 6 days.
[2] Allocated to brackets on basis of number of calls on customers.
[3] Allocated to brackets on basis of time study.
[4] Allocated to brackets on basis of total direct costs previously allocated to brackets as shown in the immediately preceding column.
[5] Total amount of $330,792.22 was estimated by respondents by applying predetermined percentages to dollar sales.
[6] Allocated to brackets on basis of time study.

For the next step of respondents' cost allocations, they tabulated all sales of bakers' yeast (sold through personal-delivery service) throughout the United States during the month of January 1937, whereby the quantity (number of pounds) of yeast sold and delivered to each and every single bakery establishment was grouped into the separate quantity-brackets. The number of pounds assigned to each quantity-bracket was then applied to the cost already allocated to the separate brackets in order to determine the cost per pound applicable to each bracket. This procedure is referred to hereinafter as "Ninth Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation.

NINTH STEP IN RESPONDENTS' COST ALLOCATIONS

Quantity-price brackets (pounds)	Total average monthly costs applied to bakers' yeast by respondents	Quantity of bakers' yeast sold through personal-delivery service in January 1937	Costs per pound
	Eighth step	*Pounds*	*Cents*
1 to 149	$101,091.33	859,226	11.7654
150 to 299	59,853.88	597,049	10.0250
300 to 499	37,652.52	488,146	7.7134
500 to 999	35,762.81	625,842	5.7144
1,000 to 1,499	17,543.58	358,457	4.8942
1,500 to 2,999	22,174.20	872,442	2.5416
3,000 to 4,999	18,855.96	905,271	2.0829
5,000 to 7,499	13,244.84	921,843	1.4368
7,500 to 9,999	11,508.48	781,025	1.4735
10,000 to 49,999	16,420.88	1,782,121	.9214
50,000 and up			
	334,108.48	8,191,422	

The costs per pound, applicable to the respective brackets as determined by respondents and shown in the preceding tabulation, are compared with respondents' price scale near the beginning of this paragraph.

PAR. 18. In compiling the cost data as shown in respondents' report, referred to in paragraph 16 hereof, *two known factors* were immediately available at the outset, namely:

(*a*) Amount of dollar sales throughout the United States of each of respondents' separate products making up an average monthly total of $6,518,015.44; and,

(*b*) Costs of sale and delivery throughout the United States of all products combined, amounting to a total monthly average of $978,793.38 (the portions of cost applicable to each of the separate products being "unknown factors").

Respondents' methods of compiling and allocating the costs of sale and delivery resolved themselves into two principal points of procedure, namely:

(1) Allocation of costs to the separate products; and,

(2) Allocation of the various elements of cost, apportioned to bakers' yeast, to the separate quantity-price brackets.

The methods employed by respondents in making their allocations of costs have been outlined, step-by-step, in detail in paragraph 17 hereof.

(*1*) *Allocation of costs to the separate products*

A review and study of the step-by-step process, set forth in paragraph 17, will show that the respondents represent the actual costs of sale and delivery of bakers' yeast and all other products to be the amounts of the lump-sum estimates set against each product as shown

in the "Second Step." This is not a fact as these amounts are not actual individual products costs. The only *actual cost factor* that has been determined is the total of $978,793.38 representing average monthly costs of sale and delivery of all products combined throughout the United States. Respondents' records do not show the actual portions of this total which are properly applicable to any one of the several separate products.

Respondents determined by a factual cost study and analysis that, of the total average cost of $978,793.38, an amount of $634,062.95 (64.78%) might be allocated directly to the two general classes of products, that is, $228,673.07 to Bakery Products and $405,389.88 to Grocery Products. All other allocations of cost depend directly or indirectly upon the application of the respective percentages to the dollar sales of the respective products as shown in the "First and Second Steps."

Nowhere in the respondents' cost study does it appear that any factual study has been made to determine the correctness of the percentages that have been applied to the dollar sales of the respective products whereby the costs of sale and delivery of these products have been determined in the form of lump-sum estimates. The cost study submitted by the respondents, referring to these percentages, states that they "are based, in part, on the companies' experience and, in part, on generally recognized costs of distribution of grocery and other products and, in the opinion of its financial officers, they provide for a fair and reasonable allocation of such costs." In addition, from all the evidence, it appears that the correctness of the percentages, or the results to be obtained by the use of them, have never been determined through any factual study, but that they represent judgment and opinion only.

The factual cost study and analysis made by respondents was not made for the purpose of determining the accuracy of the percentages or the accuracy of the results to be obtained by the use of them but it was made upon the major premise that the percentages were correct and that the lump-sum estimated costs arrived at by applying the percentages were *actual costs.*

A review and study of the step-by-step process shows conclusively that the correctness of the percentages and the accuracy of results to be obtained by the use of them is assumed by the respondents. For example, by the factual cost study and analysis to determine the allocation of costs without the application of the percentages, the respondents accounted for only $634,062.95 (64.78%) of the total known costs of all products. This left $344,730.43 unaccounted for,

which was allocated *by difference* as shown in the Fifth Step. For clarity, this procedure is reproduced below in tabular form.

RESPONDENTS' ALLOCATIONS OF COSTS TO THE TWO GENERAL CLASSES OF PRODUCTS

	Bakery products	Grocery products	Total
Total costs of sale and delivery as allocated to the two classes of products by applying predetermined percentages to dollar sales (First and Second Steps)	$408, 397. 08 (41. 72%)	$570, 396. 30 (58. 28%)	$978, 793. 38 (100. 00%)
Portion of said costs applicable to the two classes of products as determined by Respondents' factual cost study and analysis (Third Step)	228, 673. 07 (36. 06%)	405, 389. 88 (63. 94%)	634, 062. 95 (100. 00%)
Balance of said costs—allocated to the two classes of products *by difference*	179, 724. 01 (52. 13%)	165, 006. 42 (47. 87%)	344, 730. 43 (100. 00%)

A review of the above tabulation shows conclusively that, at the very outset, lump-sum estimates were made of the portions of costs applicable to each of the reparate products: such amounts, when added, gave the lump-sum estimates which respondents applied to the two general classes of products, bakery products and grocery products. From these lump-sum estimates applied to the two general classes of products, respondents deducted that portion of costs which they applied directly as the result of a factual cost study and analysis; the difference in each instance they regarded as "indirect costs." In other words, molds were established in the beginning in the form of lump-sum estimated amounts. Following this, a factual cost study and analysis was made whereby certain direct costs were earmarked and placed into the respective molds, and the remaining amounts required to fill-out the molds in each instance were provided by respondents in the form of "other costs" or "indirect costs" on which no factual studies and analyses had been made.

In the case of bakery products, respondents applied a lump-sum estimated cost of $408,397.08 (41.72%) of the total known costs. However, of the total direct costs, $634,062.95, determined by a factual cost study and analysis, respondents applied only $228,673.07 (36.06%) to bakery products; while, of the total $344,730.43 indirect costs, respondents applied $179,724.01 (52.13%) to bakery products.

If the factual study had been made for the purpose of determining the accuracy of the percentages, rather than taking their accuracy for granted, it is doubtful that 52.13 percent of the indirect costs, on which no factual cost study and analysis had been made, should be applied to bakery products, while only 36.06 percent of the direct costs, respondents applied $179,724.01 (52.13%) to bakery products. was thus applied.

Indirect Costs

As the result of a factual cost study and analysis of the total average monthly costs of $978,793.38, an amount of $634,062.95 was earmarked as coming within either the bakery classification or the grocery-product classification, leaving a balance of $344,730.43 unallocated. This item of the $344,730.43 of unallocated costs is referred to herein as "indirect costs." The elements of cost included in this item of $344,730.43 are as follows

Agency Stockrooms:	
Pay Roll	$25,666.97
Refrigerating	7,444.21
Miscellaneous	1,183.45
Total	34,294.63
Agency Delivery:	
Payroll (Unallocated Portion)	$1,952.77
Charges on Shipments to Shipping Customers	14,686.01
Charges on Shipments of Grocery Products to Jobbers	579.43
Charges on Shipments to Personal Delivery Customers	6,845.07
Delivery Expenses (28 Agencies)	239.33
Total	$24,302.61
Agency Administration:	
Payroll—General & Clerical	51,129.34
Office Supplies	6,287.48
Office Expenses	13,487.98
Telephone & Telegraph	9,125.77
Rent	27,459.51
Miscellaneous	6,632.48
Repairs—Bldg. & Equip.	5,098.92
Taxes	6,436.42
Total	$125,657.90
Division Stockrooms:	
Payroll	4,887.44
Rent—Warehouse	1,539.26
Warehouse Charges—Diamalt	1,182.10
" " —Frozen Eggs	5,168.93
" " —Other	3,118.79
Miscellaneous Expenses	1,507.81
Total	$17,404.33
Automobiles (Unallocated Portion)	857.20
Foreign Commissions	297.67

Division Administration:	
Payroll—Mgrs. Asst. Off. Mgrs	23,376.38
" —Acct. & Accts. Rec	22,978.60
" —Clerical	26,057.81
" —General	5,122.89
" —Limited Pensions	2,368.15
Traveling Expense—Mgrs. Assts. Off. Mgrs	6,082.99
" " —Accts. Dept	1,127.66
Office Supplies	4,812.67
" Expense	3,781.45
Telephone & Telegraph	3,473.14
Convention Expense—Bakery	1,630.19
" " —Grocery	253.92
Group Meetings	3,005.50
Rent	5,546.29
Gratuities	459.28
Advertising—Miscellaneous	936.78
" —Freight & Express	3,009.53
Visomatic Expenses	309.77
Taxes	261.37
Taxes—Social Security	18,321.72
Expense Distribution—(credit)	[1] 239.59
Expense Miscellaneous	4,959.23
Workmen's Compensation Insurance	4,280.36
Total	141,916.09
Grand Total	344,730.43

[1] Denotes deduction.

This total item of indirect costs was allocated to the two general classes of products as follows:

Bakery Products	$179,724.01
Grocery Products	165,006.42
Total	344,730.43

Of the total amount of $179,724.01 of the indirect costs which was applied to bakery products, an amount of $138,334.27 (76.97%) was applied to bakers' yeast. Of course, these allocations of the indirect costs were applied to the two general classes of products and thence to bakers' yeast *by difference* wholly and entirely upon respondents' assumption that their lump-sum estimates, applied to each product at the outset, were accurate and correct. Therefore, after deducting those costs which were earmarked as direct costs from the original lump-sum estimates, the difference was assumed to be indirect costs.

A review of the separate items and elements of costs as listed above will show immediately that many of such items could have been allocated directly to the two general classes of products and thence

to the separate products to which they applied. For example, "Charges on shipments to shipping customers, $14,686.01" could have been allocated directly. Likewise, "Warehouse Charges—Diamalt, $1,182.10" and "Warehouse Charges—Frozen Eggs, $5,168.93," together with several other items of cost as shown in the above list could have been allocated directly to the respective products to which they applied. No part of these particular items of cost could have possibly been incurred in connection with the sales of bakers' yeast. Nevertheless, under respondent's method of calculating costs, 40.13 percent (ratio of $138,334.27 to $344,730.43) of these costs were applied to bakers' yeast.

Reference is made also to the item of "Taxes—Social Security—$18,321.72" of which according to respondents method of allocation, $7,352.50 (40.13%) was applied to bakers' yeast. Nowhere in the record is there any evidence which would show what portions of the total amount of $18,321.72 applied to persons engaged in the sale and delivery of bakers' yeast.

In arriving at their cost differentials, these so-called "indirect costs" were applied by respondents at a ratio of 13 times as much per pound on sales to those customers who pay 25 cents per pound for bakers' yeast as was allocated to sales to the customers who pay 14½ cents per pound for their yeast.

For a further example of respondents' methods of apportioning individual costs, reference is made to the items of stockroom costs; "agency stockrooms, $34,294.63" and "division stockrooms, $17,404.33," a portion of which could have been allocated directly to frozen eggs and other products as outlined heretofore. Under respondent's method of allocation, a total amount of $20,746.80 (40.13%) of the stockroom costs was allocated to bakers' yeast and this amount was then allocated to the quantity-price brackets, in the calculation of respondents' cost differentials, at the ratio of 13 to 1, that is, 13 times as much of this cost was allocated to each pound of yeast sold to customers paying the 25-cent price as was allocated to each pound of yeast sold to customers paying the 14½-cent price. It will be noted in connection with the stockroom costs that bakers' yeast is packed in cartons at the factory, shipped to the divisions and agencies in such cartons, placed in the respective stockrooms in such cartons, removed from the stockrooms while still in the cartons, and such cartons remain unbroken when delivered to the customers. Or, in the event that a customer should take less than a carton, then the cartons are generally broken immediately prior to such delivery. In the absence of evidence to the contrary, it would appear that there

could be little or no cost difference per pound in the stockroom costs applicable to bakers' yeast.

The small item of "Foreign Commissions—$297.67" is not applicable to sales within the United States. Nevertheless, respondents have included an amount of $119.45 (40.13%) of this item in the cost applied to bakers' yeast. This small item of cost is trivial and would make little difference in the calculation of respondents' cost differentials. But, it is cited to show the methods employed by respondents in their calculation of costs.

(2) Allocation of the various elements of costs, apportioned to bakers' yeast, to the separate quantity-price brackets

The methods by which the $330,792.22 of costs of sale and delivery applied to bakers' yeast have been allocated to the respective quantity-price brackets, has previously been set forth in the "Eighth Step of respondents' cost allocations." To summarize: The respective items making up this total—to wit, $78,140.38, route selling and delivery costs; $103,366.39, solicitation costs; $10,951.18, service costs; and $138,334.27, indirect costs—were allocated to the respective quantity-price brackets as follows: Route selling and delivery costs on the basis of a time study; solicitation costs, on the basis of the number of calls on customers; service costs, on the basis of a time study; and, indirect costs, on the basis of total direct costs previously allocated to the respective brackets.

The correctness of each of the foregoing amounts cannot be determined conclusively since they were arrived at on the assumption that the lump-sum estimate of costs allocated to bakers' yeast is the actual total costs of sale and delivery of this product.

The allocation of the solicitation costs to the quantity-price brackets, having been made on the basis of calls, has not been shown to be accurate and correct, since the time spent on the separate calls varies materially; and, in addition, the evidence shows that a portion of this item represents promotional costs which have not been segregated and treated separately in respondents' computations.

The service, represented in the item of service cost, while available to all customers, the cost of it has been charged to all customers regardless of whether they have availed themselves of the service or not. The type of service represented in this item of cost together with the type of service represented in the item of bakery consultants cost, has been previously referred to in paragraph 7 hereof; and when the evidence describing these types of service was introduced by the respondents, which was prior to the time that the respondents peti-

tioned to reopen the case in order to introduce evidence with respect to costs, it was represented as being available to all customers free of charge.

Respondents' Use of Nation-Wide Costs

The complaint, as amended, alleges discrimination in price in the sale of bakers' yeast by the respondents, only according to the prices set forth in schedule A of paragraph 10 hereof. The "Report on the Examination of Costs of Sale and Delivery Applicable to Bakers' Yeast" (Res. Ex. 33), offered in evidence by the respondents to show the justification for the price differentials as set forth in said schedule A, made no disclosure of the fact that bakers' yeast is sold by the respondents according to any scale of prices other than that set forth in said schedule A. However, the evidence shows that the respondents do sell bakers' yeast at scales of prices other than those set forth in schedule A; namely, at prices as set forth in schedules B, C, D, and E of paragraph 10 hereof.

Respondents included the costs in those areas where bakers' yeast is sold according to the scale of prices set forth in said schedules B, C, D, and E in order to justify the price differentials set forth in schedule A.

* * * * * * *

After a thorough study of the "Report on Examination of Costs of Sale and Delivery Applicable to Bakers' Yeast" (Res. Ex. 33), and a review of the evidence in relation thereto, and for the numerous reasons set forth herein, the Commission rejects the costs of sale and delivery applicable to bakers' yeast, submitted by respondents, as a justification for the price differentials set forth in schedule A of paragraph 10 hereof.

CONCLUSION

Respondents, in the sale and distribution of yeast, as above described, are engaged in interstate commerce. There is a constant daily current of commerce in respondents' products throughout the country. As heretofore found, after the yeast is manufactured by the respondents at its six factories, it is packed and immediately placed in the channels of commerce so that it will reach some 25,000 customers of the respondents located over the entire country within 48 hours with but a temporary storage at the respective warehouses, which is for the purpose of expediting its delivery. The yeast remains in the original cartons until such time as it is delivered from the respondents' trucks to their customers to meet the constant

demand for such use existing on the part of said customers. The prices fixed and charged by respondents for such yeast are fixed and charged by them in the course of commerce, and such sales are sales in commerce within the meaning of section 2 (a) of the Clayton Act.

Respondents have not shown cost differences between selling and delivering the respective quantities of bakers' yeast as set forth in Schedule A of paragraph 10 hereof which are sufficient to rebut the evidence of unlawful discrimination. In their attempt to show justification for the price differentials, respondents have offered cost studies, computations, and allocations based upon lump-sum estimates which were demonstrated by their own tabulations to be erroneous, and they have distributed the results of this error throughout their cost study on the basis of the re-assumed correctness of the demonstrated errors. These lump-sum estimates were applied repeatedly, directly and indirectly, throughout respondents' allocations of costs and the partial cost data obtained by an actual survey were augmented "by difference" in order to adjust the final and vital results to coincide with the lump-sum estimates made at the outset.

Respondents have resorted to the use of lump-sum estimates in the allocation of all costs; they have included in the costs allocated to bakers' yeast many items of cost which were not incurred in the manufacture, sale, and delivery of bakers' yeast; and, they have included many items of cost which should be allocated equally to each pound of bakers' yeast. While it may be good practice to use lump-sum estimates for internal managerial purposes, and while respondents may include any and all costs to determine the selling price, we are of the opinion: (1) That respondents' lump-sum estimates cannot be made the basis for price differentials; and, (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and, (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

Respondents' arbitrary and erroneous allocations of cost are further demonstrated by their use of costs of sale and delivery in those areas where yeast is sold at the prices set forth in schedules B, C, D, and E, in order to justify the price differentials as set forth in schedule A. This is particularly true since the prices set forth

in schedules B, C, D, and E are higher and show a greater spread in some instances than the prices set forth in schedule A.

The evidence shows that there is no differing method of sale or delivery of the respondents' personal-delivery pound yeast (bakers' yeast), as distinguished from other minor sales of yeast which respondents style "shipping sales" and "sales to grocers."

We conclude that through the use of the discriminatory prices as set forth in schedule A, and as otherwise shown herein, respondents have violated and are violating, section 2 (a) of the Clayton Act.

Chairman Freer not participating.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, as amended, the answers of the respondents, as amended, testimony and other evidence taken before John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, as amended, and in opposition thereto, briefs filed herein, and oral arguments by James I. Rooney, counsel for the Commission, and by Theodore Kiendl and Edwin F. Blair, counsel for the respondents, and the Commission being of the opinion that said respondents have violated the provisions of section 2 (a) 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, and having made its report, stating its findings as to the facts and its conclusions:

It is ordered, That the respondents, Standard Brands Incorporated and Standard Brands of California, their officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of bakers' yeast in interstate commerce, or in the District of Columbia, do forthwith cease and desist from discriminating in price between different purchasers of bakers' yeast of like grade and quality, either directly or indirectly:

1. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased or required monthly by the respective purchasers, as set forth in schedule A of paragraph 10 of said findings of fact.

2. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) over a period of time by the respective purchasers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or

to injure, destroy or prevent competition with respondents or any of their customers, except where said differentials in price, based upon the quantities or volume purchased from the respondents during such period of time by said respective purchasers, make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials are allowed.

3. By means of price differences resulting from selling said bakers' yeast to a single purchaser at prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) during a period of time by such purchaser, irrespective of the quantities or volume delivered by the respondents to the separate plants, factories, bakeries, or warehouses of such purchaser, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or to injure, destroy, or prevent competition with respondents or any of their customers, except where said differentials in price make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered.

4. By selling said bakers' yeast to certain of such purchasers at so-called "off-scale" prices as described in paragraph 12 of said findings of fact, even though the differentials in price of any given price scale make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials in price are allowed.

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.

It is further ordered, That the complaint be, and the same hereby is, dismissed insofar as it applies to the sale and distribution of foil yeast.

Chairman Freer not participating.

IN THE MATTER OF

HARRY POLITIS, TRADING AS POLITIS LABORATORY

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

Docket 3227. Complaint, Sept. 15, 1937—Decision, June 20, 1939

Where an individual engaged in manufacture of preparation called "Politis," for use by members of public afflicted with eczema, athlete's foot, poison oak, and various other ailments and conditions, and in sale and distribution thereof through wholesalers and direct to consumer, to purchasers in various States other than that of origin—

(*a*) Represented, in advertising said product among members of the consuming public of the United States, through various forms of printed matter, through radio broadcasts, and in other ways, that such preparation was a competent, adequate, and effective treatment and cure for infections, eczema, athlete's foot, poison oak, impetigo, burns, skin diseases, skin ailments, pimples, rashes, boils, skin infections, running sores, ringworm, hives, varicose ulcers, skin eruptions, and abscessed conditions, facts being said product was neither medicinal preparation nor scientific ointment, contained no active therapeutic agent used by medical profession in treatment of eczema, and did not constitute remedy or cure, or competent treatment, therefor or for other ailments and conditions above mentioned, and would not prevent infection or cure it, once started; and

(*b*) Represented, through use of word "laboratory" in trade name employed by said individual, that he conducted, operated, or maintained a laboratory for purpose of manufacturing, testing, or experimenting with preparations sold by him, facts being he neither owned nor operated laboratory in connection with his business, and was neither druggist, doctor, nor chemist;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that all said representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, that consuming public was caused to purchase substantial volume of his said preparation and trade was unfairly diverted to him from others engaged in sale in commerce among the various States of products intended for like and similar purpose, and who truthfully advertise the same:

Held, That such representations, acts, and practices, as above set-out, were to the prejudice and injury of competitors aforesaid and of the public, and constituted unfair methods of competition.

Before *Mr. Henry M. White*, trial examiner.

Mr. Karl Stecher and *Mr. Reuben J. Martin* for the Commission.

Mr. George W. Mead, of Portland, Oreg., for respondent.

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 Harry Politis, an individual trading and doing business as Politis Laboratory, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Politis, is an individual trading and doing business as Politis Laboratory, having his office and principal place of business located at 4504 North Vancouver Avenue, Portland, Oreg. He is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing a certain medicinal preparation designated Politis. Respondent causes, and for more than 1 year last past has caused, said preparation, when sold by him, to be shipped from his place of business in Portland, Oreg., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments, and in the District of Columbia. There is now, and has been for more than 1 year last past, a constant current of trade and commerce in said preparation sold by the respondent between and among the various 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 individuals, and with corporations, partnerships, and firms engaged in the sale of like medicinal preparations and preparations designed for the treatment of the same ills, maladies, and conditions of the human body 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 adopted as and for a trade name under which to carry on his said business the words "Politis Laboratory" and has used said trade name and featured the same in advertisements and advertising matter, letterheads, circulars, and other media widely circulated in and among the several States of the United States. In truth and in fact respondent does not own, control, or operate any place devoted to experimental study in any branch of natural science or to the application of scientific principles in testing and analyzing or in the preparation of medicines, drugs, or chemicals and has never owned, controlled, or operated any such place so devoted to such uses. The use by respondent of the word "Laboratory" in his trade name and in his advertising matter is false and misleading.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, in soliciting the sale of and selling said prepara-

tion, "Politis," respondent represents, and for more than 1 year last past has represented, in and by radio broadcasts and advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media as follows:

One of the leading specialists and surgeons of Europe devoted years of his life for the benefit of humanity which resulted in his having discovered a formula that will prevent infections * * *. This same is invaluable in alleviating suffering and gives permanent relief from eczema, athlete's foot, poison oak, impetigo, burns, sunburn and many other skin diseases * * *. It is called Politis.

Infections in America in 1934, according to reliable statistics, cost the lives of 60,000 people.

Politis prevents infection * * * it also does away with the infection, after it has once started. It is needless to suffer from eczema, athlete's foot, poison oak, sunburn, or many other skin ailments, when you can get Politis, a herb preparation which is absolutely harmless, and cures.

It will keep your children and your family safe from infection and it is invaluable as an aid to all skin ailments.

Erase the disfigurement and ease the pain of pimples, rashes or boils. Follow the advice of countless satisfied users and apply Politis at the first trace of skin infections.

For dangerous burns, rashes, running sores and other infections.

Politis kills the parasite that causes Athlete's Foot—prevents infection—soothes and brings about healing effect.

One application of Politis promotes healing and soothes the irritation.

Politis is especially recommended for Impetigo, Ringworm and other forms of skin infections. Soothing, healing, antiseptic.

For BOILS and PILES.

I am introducing Mr. Harry Politis who has a remedy which cures piles and skin eruptions.

All of said representations and statements, together with other statements not herein detailed, purport to be descriptive of respondent's preparation and of the beneficial results that may reasonably be expected to be obtained by the use of said preparation. In and by such representations, hereinbefore set-out, respondent represents that said preparation is a competent, adequate, and effective treatment and cure for infections, eczema, athlete's foot, poison oak, impetigo, burns, skin diseases, skin ailments, pimples, rashes, boils, skin infections, running sores, ringworm, hives, varicose ulcers, skin eruptions, and abscessed conditions.

PAR. 4. In truth and in fact the representations made by the respondent in aid of the sale of his preparation are grossly exaggerated, false, misleading, and incorrect in that said preparation is not a competent, adequate, or effective treatment and cure for infections, eczema, athlete's foot, poison oak, impetigo, burns, skin diseases, skin ailments, pimples, rashes, boils, skin infections, running sores, ring-

worm, hives, varicose ulcers, skin eruptions, and abscessed conditions or for any other ailment of the human body.

PAR. 5. There are among the competitors of respondent as mentioned in paragraph 1 hereof many who sell and distribute in commerce similar medicinal preparations and preparations designed for the same general purposes who do not misrepresent the properties or qualities or therapeutic virtues, functions, uses, or effects of their said competing products.

PAR. 6. The representations made by respondent, as hereinabove set forth, and other similar representations made by respondent have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous belief that said preparation is a competent, adequate, and effective treatment and cure for infections, eczema, athlete's foot, poison oak, impetigo, burns, skin diseases, skin ailments, pimples, rashes, boils, skin infections, running sores, ringworm, hives, varicose ulcers, skin eruptions, and abscessed conditions. 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 preparation because of the erroneous beliefs engendered as above set forth, and to unfairly divert trade to respondent from competitors engaged in the sale of similar preparations in commerce among and between the various States of the United States. 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.

PAR. 7. The above-alleged acts and practices of the 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 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 September 15, 1937, issued and served its complaint in this proceeding upon the respondent, Harry Politis, an individual, trading as Politis Laboratory, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Harry Politis, filed no answer to the complaint.

After the issuance of said complaint, 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 George W. Mead, 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 said complaint, testimony and other evidence and brief in support of the complaint (no answer or brief in opposition thereto having been filed), 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. Respondent, Harry G. Politis, is an individual trading and doing business under the name "Politis Remedy Company," with offices and principal place of business located at 4504 North Vancouver Avenue, Portland, Oreg. Prior to September 29, 1937, respondent transacted this business under the trade name "Politis Laboratory." Respondent is now, and has been for more than three years last past, engaged in the manufacture and sale of a preparation under the designation "Politis," for use by the members of the consuming public who are afflicted with eczema, athlete's foot, poison oak, sunburn, impetigo, ringworm, boils, piles, skin eruptions, running sores, pimples, rashes, hives, varicose ulcers, and abscessed conditions of the body. Respondent distributes his product through the medium of wholesalers and also by mail direct to the consumer.

PAR. 2. The respondent causes said product, "Politis," when sold, to be transported from his place of business in Portland, Oreg., to the purchasers thereof located in the various States of the United States other than the State of origin of such shipment.

PAR. 3. Respondent is now, and for more than 3 years last past has been, engaged in substantial competition with other individuals, corporations, partnerships, and firms engaged in the sale of medicinal preparations designed for use in the treatment of the same ills, maladies, and conditions of the human body in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale of and in selling his said product and for the purpose of creating a demand therefor, now causes and for more than 3 years last past has caused advertisements to be issued, published, and circulated to and among the members of

the consuming public of the United States in various forms of printed matter, by radio broadcasts, and in other ways.

PAR. 5. Respondent makes, and has made to the general consuming public, statements with reference to the alleged value and merit of said product; some of which statements so made and circulated by the respondent are as follows:

Politis prevents infection—it also does away with the infection, after it has once started. It is needless to suffer from eczema, athlete's foot, poison oak, sunburn or many other skin ailments, when you can get Politis, a herb preparation which is absolutely harmless, and cures * * *. It will keep your children and your family safe from infection, and it is invaluable as an aid to all skin ailments.

One of the leading specialists and surgeons of Europe devoted years of his life for the benefit of humanity which resulted in his having discovered a formula that will prevent infections—infections that kill approximately 60,000 people annually. This same is invaluable in alleviating suffering and gives permanent relief from eczema, athlete's foot, poison oak, impetigo, burns, sunburn and many other skin diseases—it is called Politis.

A Natural Remedy From the Formula of a Famous Physician Politis is not an ordinary remedy. Behind the formula lies a lifetime of medical skill and training which few men have ever attained. Dr. James Politis, the creator of the remedy which bears his name, was a citizen of Athens, Greece. He attained his first medical degree from Athens University. But that was only a start. Dr. Politis spent four years in medical study and research at the University of Berlin, four more years at the University of Vienna, and finally finished his advanced studies with another four years' work at the University of Paris * * *.

Creates a New Type of Remedy.

* * * It won instant recognition throughout the world—physicians everywhere acclaiming it as a remedy which has brought a forward step in medicine.

Erase the disfigurement and ease the pain of pimples, rashes or boils. Follow the advice of countless satisfied users and apply Politis at the first trace of skin infections.

For dangerous burns, rashes, running sores and other infections.

Politis kills the parasite that causes athlete's foot—prevents infection—soothes and brings about healing effect.

One application of Politis promotes healing and soothes the irritation.

Politis is especially recommended for impetigo, ringworm, and other forms of skin infections. Soothing, healing, antiseptic.

For BOILS and PILES.

I am introducing Mr. Harry Politis who has a remedy which cures piles and skin eruptions.

Through the use of the statements hereinabove set forth and others similar thereto, not specifically set-out herein, respondent represents that said preparation is a competent, adequate, and effective treatment and cure for infections, eczema, athlete's foot, poison oak, impetigo, burns, skin diseases, skin ailments, pimples, rashes, boils,

skin infections, running sores, ringworm, hives, varicose ulcers, skin eruptions, and abscessed conditions.

PAR. 6. Respondent is not a druggist, doctor, or chemist and he does not own or operate nor has he ever owned or operated a laboratory in connection with his business.

PAR. 7. The preparation "Politis" is alleged by respondent to be composed of the following ingredients: Olive oil, pine pitch, petrolatum, beeswax, and a small quantity of extract of amaranto herb.

A qualitative analysis of the preparation disclosed no odor or taste of menthol, phenol, flavoring material, or essential oils. The residue from petroleum ether extracts showed traces of sodium and calcium only on spectographic examination. No starch or microscopically identifiable vegetable material was found. No salicylates or benzoates were identified. The material is grossly and microscopically homogeneous, and there were no foreign bodies or insoluble materials present. It has a definite odor of mutton grease, and the lack of odor of certain essential oils and organic compounds rule out this group. The steam distillation of the product did not contain phenol, menthol, resorcinol, or any apparent essential oils. The beeswax used is not a chemically pure grade of beeswax. It contained no olive oil or any grease or oil that has a significant iodide number. There was no odor of pine, pine oil, or pine pitch, and the analysis disclosed the presence of no vegetable matter, either of amaranto or other particular herb. No narcotics were present.

PAR. 8. There is no mention of an herb "amaranto" in the United States Pharmacopoeia, 11th Edition, nor in the National Formulary, 6th Edition, 1936.

PAR. 9. Respondent's preparation "Politis" is not a medicinal preparation and is not a scientific ointment. It contains no active therapeutic agent which is used by the medical profession in the treatment of eczema, nor does it constitute a remedy or cure or competent treatment for eczema, athlete's foot, poison oak, impetigo, pimples and skin infections, rashes, boils, running sores, varicose ulcers, abscesses, ringworm, hives, or burns. It will not prevent infection, nor will it cure infection which has once started.

PAR. 10. Each and all of the false and misleading claims and representations made by respondent, as aforesaid, by means of advertisements, radio broadcasts, and in other ways, in offering for sale and selling "Politis," were and are calculated to, and have had and now have the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the belief that all of said representations are true.

PAR. 11. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said preparation known as "Politis," with the result that trade has been unfairly diverted to respondent from other individuals, corporations, partnerships, and firms engaged in the sale in commerce among and between the various States of the United States of products intended to be used for like and similar purposes, who truthfully advertise their products.

CONCLUSION

The aforesaid representations, acts, and practices of the respondent, as hereinabove found, are to the prejudice and injury of respondent's aforesaid competitors and of the public 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 on the complaint of the Commission, testimony and other evidence taken before Henry M. White, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, and brief filed herein on behalf of the Commission (no answer or brief having been filed on behalf of the respondent), 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, Harry Politis, invidually and trading as Politis Laboratory, or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Politis" in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the preparation now designated as "Politis" or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, is a cure or remedy for eczema, athlete's foot, poison oak, impetigo, pimples, rashes, boils, running sores, varicose ulcers, abscesses, ringworm, hives, burns, or any other skin infections or diseases, or constitutes a competent or adequate treatment therefor.

2. Representing, through the use of the word "Laboratory" or any other term of similar meaning or like import as a part of any

trade name, or in any other manner, or through any other means or device, that respondent conducts, operates, or maintains a laboratory for the purpose of manufacturing, testing, or experimenting with the preparation sold 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.

IN THE MATTER OF

PHILIP F. RUBENSTEIN, TRADING AS ASSOCIATED SALES COMPANY

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

Docket 3496. Complaint, July 16, 1938—Decision, June 20, 1939

Where an individual engaged, as partner and through corporation, of which he was president and principal stockholder, in sale of various articles of merchandise, including clothing, clocks, glassware, and other items—

Furnished to his customers various devices and plans for selling his said merchandise, which involved operation of games of chance, for distribution thereof to ultimate consumer wholly by lot or chance, and the furnishing to customers of push cards, order blanks, and circulars explaining his plan of selling same and allotting premiums or prizes to patrons of said push cards, in accordance with plan by which amount paid for chance was determined by number pushed by chance, and person securing certain number received "Solid Copper Nip Cup," and person selecting from list of feminine names on card name corresponding to that concealed under card's master seal received choice of man's or woman's "Elkskein" jacket or "Roxboro" pendulum clock, and operator of card received from said individual, when pushes had all been sold, one of jackets aforesaid; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his said merchandise through sale thereof by cards substantially similar to those above described, contrary to the established public policy of the United States Government, and in violation of the criminal law, and in competition with many who do not use same or similar methods of distribution as contrary to public policy;

With result that many persons were attracted by his said plan or method of distribution of his merchandise, by element of chance involved therein, and were thereby induced to buy and sell same in preference to that offered by his competitors aforesaid, and trade was thereby diverted unfairly to him from such competitors:

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

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

Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip F. Rubenstein, individually and trading as Associated Sales Co., has violated the provisions 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, Philip F. Rubenstein, is an individual doing business under the trade name and style of Associated Sales Co., with his principal office and place of business located at 605 South First Street, Milwaukee, Wis. He is now and for some time last past has been, engaged in the sale and distribution of clothing, glassware, humidors, trays, lamps, kitchenware, clocks, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from his principal place of business aforesaid to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 in commerce, furnishes and 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 distributes, and has distributed, to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 24 feminine names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name selected. Said push card has 24 small partially perforated disks marked "Push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Con-

cealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal concealed within which is 1 of the feminine names appearing on the reverse side of said card. The push card bears printed legends or instructions as follows:

Seller and Winner
Each Receive Choice
of
MEN'S
"ELKSKEIN" JACKET
LADIES'
"ELKSKEIN" JACKET
ROXBORO
PENDULUM CLOCK

4—EXTRA WINNERS—4

All numbers
ending in 5
each win a
beautiful
Solid Copper
Nip Cup.—
Numbers under
29 pay what
you draw.
Numbers over
29 pay only
29¢. No higher.

Total
$6.50

SEAL
Write your
name opposite
name you
select on
reverse side.

Respondent furnishes, and has furnished, his representatives with additional printed instructions or suggestions for using said push card which are as follows:

What to do: There is nothing complicated about it. You merely show the jacket illustrations to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful jacket for the small sum of 1¢ up to 29¢. The enclosed salescard has 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29 pay amount they draw, all numbers over 29 pay only 29¢ * * * no higher. When all the names are sold, the amount collected will be $6.50. Hold salescard for your record, do not return to us.

Fill out the order blank. Send the order blank to us together with a money order or bank draft for $6.50. Payment of this amount entitles you to any two garments, one for you and one for the fortunate person who selected the name under the seal. The two garments and other gifts will be shipped to you prepaid. We will include an extra bonus gift if we receive your order in ten days.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or

chance. Respondent furnishes, and has furnished, various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such push cards are similar to the push card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, 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 a 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged 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 and 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of the respondent, as alleged herein, 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 the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16 A. D. 1938, issued and served its complaint in this proceeding upon the respondent, Philip F. Rubenstein, individually and trading as "Associated 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, no answer being filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly appointed by it. John A. Nash appeared as attorney for the respondent but introduced no testimony or other evidence in opposition to the complaint. 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 on the said complaint, testimony and other evidence, and brief in support of the complaint; no brief being filed in opposition thereto. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Philip F. Rubenstein, from about November 1936, to April 1, 1938, was engaged in the business of selling merchandise under the trade name, "Associated Sales Company," his principal place of business being located at 605 South First Street, Milwaukee, Wis. Said articles of merchandise included clothing, glassware, humidors, trays, lamps, kitchenware, and clocks, which merchandise was sold and shipped by respondent to purchasers in States other than the State in which respondent's place of business was located and from which said shipments were made. In the course and conduct of his business, respondent was in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

Par. 2. The respondent, on April 1, 1938, caused to be incorporated under the laws of the State of Wisconsin, the Associated Sales and Bag Co., and on that date the respondent and his partner (whose name does not appear in the record) sold the aforesaid business to said corporation, since which time the corporation has owned and conducted the business at the same place and under the same trade

name, "Associated Sales Company." The respondent is president of said corporation and its principal stockholder.

PAR. 3. The respondent, in the course and conduct of his business, furnished to his customers various devices and plans for selling his merchandise which involved the operation of games of chance, by which said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance. The method, or sales plan, adopted and used by respondent is as follows:

Respondent furnished his customers with push cards, order blanks, and circulars explaining his plan of selling merchandise and allotting premiums or prizes to patrons of said push cards. On one of the said push cards appear 24 partially perforated disks marked "Push," above each of which is printed 1 of a number of feminine names shown in alphabetical order on the reverse of the card. Concealed within each disk is a number which is not disclosed until the disk is pushed or separated from the card. The card also bears a large master seal, concealed within which is 1 of the said feminine names. The consumer customer pushes 1 of the disks and the number disclosed determines the amount to be paid in cents, but the maximum amount to be paid is not to exceed 29 cents. In the event the number disclosed ends in a "5," the customer receives a "Solid Copper Nip Cup," and the one who pushes the disk over which appears the feminine name concealed within the master seal receives choice of a man's or lady's "Elkskein" jacket, or a "Roxboro" pendulum clock. The person who purchased the merchandise and push card from respondent received from respondent 1 of the "Elkskein" jackets when all the pushes had been sold.

PAR. 4. The various other articles of merchandise which were sold and distributed by respondent were sold by means of push cards similar to that described in paragraph 3 hereof except in minor details, and all of respondent's merchandise was sold and distributed solely by lot or chance.

PAR. 5. The respondent, by the sales method hereinbefore described, placed in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his merchandise was contrary to the established public policy of the Government of the United States and in violation of the criminal law.

PAR. 6. Many persons were attracted by the respondent's sales plan or method of distribution of his merchandise by the element of chance involved therein, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale by his competitors, many of whom do not use the same or similar

methods of distribution, because such method is contrary to public policy; and as a result, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts were to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, in violation 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 (respondent having filed no answer), 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, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Philip F. Rubenstein, individually and trading as Associated Sales Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clothing, glassware, humidors, trays, lamps, kitchenware, clocks, or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, 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 any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

THE KOLYNOS COMPANY

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

Docket 3587. Complaint, Sept. 14, 1938—Decision, June 20, 1939

Where a corporation engaged in manufacture of its "Kolynos" tooth paste or dentifrice, and in sale and distribution thereof in interstate commerce to purchasers in various points in States other than that from which shipment was made; in advertisements which it disseminated or cause to be disseminated through newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and which were calculated to induce purchase of such cosmetic or tooth paste—

(*a*) Represented, directly or by implication, that said dentifrice was an outstanding, competent, and effective germicidal or antiseptic agent which would kill all harmful bacteria in the oral cavity, through such statements, among others, as "* * * actually kills harmful germs * * *," "An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay," and "The use of an outstanding germicidal and economical tooth-paste is the basis for tooth care," facts being there is no germicidal agent which can be put into mouth which will kill all bacteria present and produce sterile condition, germs therein capable of producing harm are located principally in inaccessible areas of said cavity and are not reached by said preparation as used, which, while containing mild antiseptic with tendency to inhibit growth of some microorganisms with which it comes in contact on the teeth, will not kill or destroy all the harmful germs in oral cavity, and is not a competent or proved antiseptic or germicidal agent;

(*b*) Represented, as aforesaid, that said dentifrice would remove all stains from teeth and keep teeth and mouth thoroughly clean and healthy, and assure user of sound teeth and bring out and restore brightness to teeth which were dull or discolored, through such statements, among others, as "The amazing scientific discovery that brings out the natural brightness," "* * * works on the yellowish looking dull coating that disfigures your teeth," "* * * gives them the gleaming dazzling brightness you have always wanted," and "Germicidal and cleansing ingredients literally fill each tube of Kolynos," and "* * * keeps teeth and mouth thoroughly clean * * *," facts being it will not accomplish result last set forth nor assure user of sound teeth, efficiency of tooth paste in cleaning teeth depends primarily upon method of application by individual, inefficient brushing will not clean teeth regardless of dentifrice used, and said tooth paste will not remove all types of stains from teeth or any stain other than ordinary surface stains, nor change or alter their natural color or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains; and

(*c*) Represented, as aforesaid, that said dentifrice was more concentrated or economical to use than competing products and would accomplish results which they could not, through such statements, among others, as "* * * is

concentrate," "Use only half an inch * * *," "* * * unique in its action * * * lasts longer—you use only one-third as much as ordinary toothpaste. * * * economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube * * *," facts being said preparation was not more concentrated or economical than a number of competing products, did not accomplish results which could not be brought about by number of competing dentifrices, and was not an amazing scientific discovery or an unique scientific formula;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by said misrepresentations, that number of such public purchased substantial quantity of its said product and trade was unfairly diverted from others likewise engaged in sale and distribution of dentrifrices and who truthfully advertise and vend the same; to the substantial injury of competition in commerce:

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 and unfair and deceptive acts and practices.

Mr. Merle P. Lyon for the Commission.

Rogers, Ramsey & Hoge, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Kolynos Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Kolynos Co., is a Connecticut corporation, which has its principal office and place of business in the city of New Haven, in the State of Connecticut. Respondent is now, and has been for some years last past, engaged in the manufacture and in the sale and distribution in commerce as herein set-out, of a certain tooth paste, known as "Kolynos."

Par. 2. Said respondent, being engaged in business as aforesaid, causes said tooth paste, when sold, to be transported from its office and place of business in the State of Connecticut to purchasers thereof located at various points in States of the United States other than Connecticut and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in the aforementioned product so 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 said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing tooth pastes and other preparations designed for similar usage 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 its said business, and for the purpose of inducing the purchase of its tooth paste, respondent has caused false advertisements containing representations and claims with respect to the properties of said tooth paste and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Thousand of dentists throughout the world recommend Kolynos because of its ability to remove unsightly looking stain, to clean the teeth without harmful bleaching action or unnecessary abrasion. Kolynos actually kills harmful germs and keeps teeth and mouth thoroughly clean.

It is the discovery of a great dental scientist, N. S. Jenkins, who created a toothpaste so remarkable it is used in a different way.

You see Kolynos contains ingredients not found in ordinary toothpastes.

An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay.

The proved antiseptic and germicidal tooth paste.

The use of an outstanding germicidal and economical tooth paste is the basis for tooth care.

Germicidal and cleansing ingredients literally fill each tube of Kolynos.

The amazing scientific discovery that brings out the natural brightness.

The remarkable toothpaste that brings out the natural color and brightness of the teeth.

It brings out the natural color and brightness of dull, discolored teeth.

Acts to remove the ugly coating of yellow that covers and encloses your teeth.

It works on the yellowish looking dull coating that disfigures your teeth.

How it gives them the gleaming, dazzling brightness you have always wanted.

It starts in to erase the yellowish discolored appearance of your teeth.

Kolynos is concentrated.

Use only half an inch of Kolynos—the proved antiseptic and germicidal toothpaste—on a dry brush—for two minutes! Your mouth will immediately feel

cleaner and fresher and your teeth will glisten and sparkle. Discover for yourself the joy of a clean mouth and sound, attractive teeth.

Now Kolynos toothpaste (used in 87 different countries) destroys mouth germs. It is unique in its action—it foams in one's mouth, forcing its germ destroying agents into every crevice and fissure. It cleans teeth—polishing them to their natural brightness. Kolynos lasts longer—you only use one-third as much as ordinary toothpaste. Moreover, it is economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube of Kolynos.

PAR. 5. Through use of the statements and representations hereinabove set forth, and others similar thereto not herein set-out, all of which purport to be descriptive of respondent's tooth paste and its effectiveness in cleaning and beautifying the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things: That Kolynos tooth paste removes stains from teeth; that it kills all harmful germs in the oral cavity and keeps the teeth and mouth thoroughly clean and healthy on account of its antiseptic and germicidal qualities; that it restores natural color and brightness to teeth which have become dull and discolored; that it removes the yellow coating on teeth; that it is an outstanding and competent germicidal and antiseptic agent; that it is more concentrated and economical to use than competing preparations and that its use accomplishes results which cannot be accomplished with competing preparations.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertisements. The true facts are that Kolynos tooth paste does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Kolynos will not kill or destroy all the harmful germs in the oral cavity and it is not a competent or proved antiseptic and germicidal agent. It does not keep the teeth and mouth thoroughly clean because of any alleged antiseptic and germicidal qualities or for any other reason. The use of Kolynos will not remove all types of stains from teeth or bring out the natural color and brightness of dull discolored teeth or restore natural color and brightness to such teeth. Kolynos is no more concentrated or economical to use than other competing preparations and its use does not accomplish results that cannot be accomplished by other competing preparations. Any cleaning effect accomplished by brushing the teeth with tooth paste is due primarily to the mechanical action of the brush and not to the ingredients contained in the tooth paste.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Kolynos tooth paste.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to Kolynos tooth paste, 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 and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said Kolynos tooth paste possesses the properties claimed and represented and will accomplish the results so represented and into the purchase of substantial quantities of respondent's Kolynos tooth paste as a result of such erroneous and mistaken beliefs induced by the aforesaid misrepresentations, acts, and practices of the respondent.

PAR. 9. As a result, trade has been diverted unfairly to the respondent from competitors likewise engaged in the business of distributing and selling in commerce between and among the various States of the United States and in the District of Columbia tooth pastes and other preparations designed for similar usage who truthfully advertise the effectiveness in use of their respective products. 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 and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 14th day of September 1938, issued and served its complaint in this proceeding upon said respondent, the Kolynos Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On December 1, 1938, an answer was filed by the respondent. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the said respondent by its counsel, Rogers, Ramsay, and Hoge, 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, accepted, and filed, 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, the Kolynos Co., is a corporation duly organized and existing under the laws of the State of Connecticut with its office and a place of business in the city of New Haven, Conn. Respondent is now and for some time has been engaged in the business of manufacturing, selling, and distributing in interstate commerce a tooth paste or dentifrice known as "Kolynos."

PAR. 2. Respondent, being engaged in business as aforesaid, causes said preparation, when sold, to be transported from its place of business in the State of Connecticut to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondent now maintains a course of trade in commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 3. Respondent is now and has been in the course and conduct of its said business in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes or dentifrices in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of its business in said commerce for the purpose of inducing the purchase of said product, Kolynos tooth paste, has caused advertisements to be placed in newspapers and other periodicals in general circulation in the various States of the United States and in the District of Columbia. These advertisements contain statements concerning the ingredients in, and efficacy of, the product Kolynos tooth paste, and the results that may be expected to be obtained from the use thereof.

Prior to the date of the issuance of the complaint herein, respondent in said advertisements made in substance the following statements:

Thousands of dentists throughout the world recommend Kolynos because of its ability to remove unsightly looking stain, to clean the teeth without harmful bleaching action or unnecessary abrasion, Kolynos actually kills harmful germs and keeps teeth and mouth thoroughly clean.

It is the discovery of a great dental scientist, N. S. Jenkins, who created a toothpaste so remarkable it is used in a different way.

You see Kolynos contains ingredients not found in ordinary toothpastes.

An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay.

The proved antiseptic and germicidal toothpaste.

The use of an outstanding germicidal and economical toothpaste is the basis for tooth care.

Germicidal and cleansing ingredients literally fill each tube of Kolynos.

The amazing scientific discovery that brings out the natural brightness.

The remarkable toothpaste that brings out the natural color and brightness of the teeth.

It brings out the natural color and brightness of dull, discolored teeth.

Acts to remove the ugly coating of yellow that covers and encloses your teeth.

It works on the yellowish looking dull coating that disfigures your teeth.

How it gives them the gleaming dazzling brightness you have always wanted.

It starts in to erase the yellowish discolored appearance of your teeth.

Kolynos is concentrate.

Use only half an inch of Kolynos—the proved antiseptic and germicidal toothpaste—on a dry brush—for two minutes! Your mouth will immediately feel cleaner and fresher and your teeth will glisten and sparkle. Discover for yourself the joy of a clean mouth and sound, attractive teeth.

Now Kolynos toothpaste (used in 87 different countries) destroys mouth germs. It is unique in its action—it foams in one's mouth, forcing its germ destroying agents into every crevice and fissure. It cleans teeth—polishing them to their natural brightness. Kolynos lasts longer—you use only one-third as much as ordinary toothpaste. Moreover, it is economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube of Kolynos.

PAR. 5. The use of the aforesaid advertisements, disseminated in the manner described, is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Kolynos tooth paste.

PAR. 6. There is no germicidal agent which can be put into the mouth which will kill all bacteria present in the oral cavity and produce a sterile condition. The germs in the mouth capable of producing harm are not principally those floating around in the saliva but those buried in the folds and crypts of the mucous membrane or located in other inaccessible areas of the oral cavity and these germs are not reached by Kolynos tooth paste as same is used. While Kolynos tooth paste contains mild antiseptics which may have a

tendency to inhibit the growth of some micro-organisms with which it comes in contact on the teeth, it will not kill or destroy all the harmful germs in the oral cavity and it is not a competent or proved antiseptic or germicidal agent. It will not keep the teeth and mouth thoroughly clean or assure the user of sound teeth. The efficiency of a tooth paste in cleaning the teeth depends primarily upon the method of application. Efficient brushing will clean the teeth whereas inefficient brushing will not clean the teeth regardless of the dentifrice used on the brush. Kolynos tooth paste will not remove all types of stain from the teeth or any stains other than ordinary surface stains. It will not change or alter the natural color of teeth or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains. Kolynos is not more concentrated or economical to use than a number of competing dentifrices and its use does not accomplish results that cannot be accomplished by a number of competing dentifrices. Kolynos tooth paste is not an amazing scientific discovery or an unique scientific formula.

PAR. 7. Among the competitors of the respondent are many who do not in any way misrepresent the ingredients in, or the efficacy of, their products in distributing the same in commerce.

PAR. 8. The aforesaid acts and practices of the said respondent had and now have, a tendency and capacity to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the said respondent as aforesaid, a number of the purchasing public has purchased a substantial quantity of respondent's product, Kolynos tooth paste, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of dentifrices who truthfully advertise and vend the same. As a result thereof, substantial injury has been, and is now being done by the said respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, practices, and representations of the said respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the statement of facts contained therein may be made a part of the record herein, and 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 may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; 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, the Kolynos Co., a corporation, its officers, agents, and representatives, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a dentifrice now designated by the name of Kolynos, or any other dentifrice composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said dentifrice, which advertisements represent, directly or through implication, that said dentifrice is an outstanding or competent or effective germicidal or antiseptic agent, or that it will kill all harmful bacteria in the oral cavity; that said dentifrice will remove all stains from teeth or any stains other than ordinary surface stains; that said dentifrice will keep the teeth and mouth thoroughly clean and healthy or will assure the user of sound teeth; that said dentifrice will change the natural color or brightness of teeth or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains; that said dentifrice is more concentrated or economical to use

than competing dentifrices, or that it will accomplish results which cannot be accomplished by competing dentifrices.

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

HYMAN MENDELS, TRADING AS J. J. HENDERSON

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

Docket 3179. Complaint, July 21, 1937—Decision, June 22, 1939

Where an individual engaged in sale and distribution of clocks to customers throughout the United States—

Furnished various devices and plans for selling his said merchandise which involved operation of game of chance through which same was distributed to ultimate consumer wholly by lot or chance, and the furnishing of his customers with push cards, order blanks, and circulars explaining his plan for selling his said products and allotting premiums or prizes to patrons of said cards under such plan, in accordance with which number pushed by chance determined amount paid by customer for his chance, and person securing certain number received fountain pen desk set, and person selecting feminine name corresponding to that concealed within card's master seal received "Venus Rotary Clock," and patrons pushing other disks received nothing, and operator of card was compensated through receipt for himself of one of such clocks; and

Placed thereby in the hands of others means of conducting lotteries in sale of his said products, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with many who do not use same or similar method of distribution as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution for his merchandise and by element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered by competitors, many of whom, as aforesaid, do not use such or similar methods, and trade was thereby unfairly diverted to said individual from such competitors:

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

Before *Mr. William C. Reeves*, *Mr. W. W. Sheppard*, and *Mr. Charles F. Diggs*, trial examiners.

Mr. Henry C. Lank, *Mr. D. C. Daniel*, *Mr. Alden S. Bradley*, 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 Hyman

Mendels, individually and trading as J. J. Henderson, 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 name J. J. Henderson, with his principal office and place of business located at 113 Hudson Street, Jersey City, N. J. He 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. He causes and has caused said products when sold to be shipped or delivered from his place of business in the State of New Jersey to purchasers thereof in New Jersey 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 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 1 of the names on the card. Prospective purchasers select 1 of the names 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 cents for the privilege of selecting 1 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. Illustrative of a few, but not descriptive of all of such legends, is 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¢—No higher—Write your name opposite name you select on reverse side.

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 person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives 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 until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. 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 is thus induced and persuaded into purchasing pushes from said cards in the hope that they may select a prize-winning name and thus obtain an article of merchandise for a sum not in excess of 29 cents. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes said devices 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 said clocks have a retail value greater than the cost of a single push, and the sale of said 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 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. 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 July 21 A. D. 1937, issued and served its complaint in this proceeding upon the respondent, Hyman Mendels, individually and trading as "J. J. Henderson," 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 no answer being filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank, D. C. Daniel, A. S. Bradley, and P. C. Kolinski, attorneys for the Commission, before W. C. Reeves, W. W. Sheppard, and Charles F. Diggs, respectively, examiners of the Commission theretofore duly appointed by it. John A. Nash appeared as attorney for the respondent, but introduced no testimony or other evidence in opposition to the complaint. The testimony and other evidence introduced on behalf of the Commission were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing on the said

complaint, the testimony and other evidence, and brief in support of the complaint; no brief being filed in opposition thereto. And the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hyman Mendels, trading under the name "J. J. Henderson," was engaged in selling and distributing clocks from July A. D. 1935, to March A. D. 1937. Respondent sold and distributed said clocks in commerce between and among the various States of the United States. Respondent received orders for his merchandise at his place of business located at 113 Hudson Street, Jersey City, N. J., and shipped the same from his place of business located at 221 West Forty-second Street, New York, N. Y., to customers located throughout the United States. Respondent, during the time he was so engaged, was in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of like or similar articles of merchandise.

PAR. 2. Respondent, in the course and conduct of his said business, furnished to his customers various devices and plans for selling his merchandise, which involved the operation of games of chance, by which said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent is as follows:

Respondent furnishes his customers with push cards, order blanks, and circulars explaining his plan for selling his said merchandise and allotting premiums or prizes to patrons of said push cards. One of said push cards has 24 partially perforated disks marked "Push," above each of which is printed one of the 24 feminine names which appear in alphabetical order on the reverse of the card. Concealed within each disk is a number which is not disclosed until the disk is pushed or separated from the card; the card also bears a large master seal, concealed within which is one of the said feminine names. The method of operating this push card is as follows:

The consumer customer pushes one of the said disks and the number disclosed determines the amount in cents to be paid therefor by him, but the maximum amount to be paid for 1 push is not to exceed 29 cents. In the event the number disclosed is "33," the patron of the push card receives a fountain pen desk set, and the one who pushes the disk over which appears the feminine name concealed

within the master seal receives a "Venus Rotary Clock." Nothing is received by the patrons pushing the other disks.

After all the disks have been pushed, the person who sold the pushes pays the respondent $6.50 and receives from him two clocks and a fountain pen desk set; one of which clocks he retains as compensation for his services, and the other clock and the fountain pen desk set are delivered to the persons who pushed the winning disks.

PAR. 3. The respondent, by the sales method hereinbefore described, placed in the hands of others the means of conducting lotteries in the sale of said merchandise, and said method of sale and distribution of his merchandise is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 4. Many persons were attracted by respondent's sales plan or method of distribution for his merchandise by the element of chance involved therein, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale by his competitors, many of whom do not use the same or a similar method of distribution because such method is contrary to public policy; and as a result, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts, were to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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 (respondent having filed no answer), testimony and other evidence taken before William C. Reeves, W. W. Sheppard, and Charles F. Diggs, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Hyman Mendels, individually and trading as J. J. Henderson, or under any other name or names,

his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, 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 any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

ARTHUR R. PATTERSON, ALBERT C. KEHR, ARTHUR W. EDSON, EVA O. BROWN, AND MINNETHA COE, DOING BUSINESS AS PATTERSON SCHOOL

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

Docket 3228. Complaint, Sept. 18, 1937—Decision, June 23, 1939

Where four individuals engaged in conducting correspondence course of instruction to prepare persons for examinations for positions in the classified civil service of the United States, and a fifth individual, principal of said school under arrangement and agreement with the others, and former owner of the business and school involved and, for a time long theretofore, Government employee in the local post office and local representative, as below set forth, of the United States Civil Service Commission; engaged, as above set forth, in selling their said courses through advertisements and salesmen and solicitors employed for the purpose, and through district managers under contract with them—

(*a*) Represented, directly and indirectly, that they had civil service positions at their disposal and could assist applicants for such positions, and were in a particularly advantageous or unique position with respect to information pertaining to examinations for such positions, and stressed and featured supposed advantages and status of said principal as former Civil Service Commission employee and expert of long experience in the subject and field in question, through advertisements in the "Help Wanted" columns of the newspapers and elsewhere therein, and in periodicals of general circulation in the various States, containing such statements as "$1,260 to $2,100 year, to start working for the United States Government * * *," "* * * No special education or experience usually required * * *," "Get one of these new jobs with the U. S. Government. * * *," "* * * (former gov't examiner) Principal * * * We will advise you where your examination will be held, and how to pass it with a high rating for early appointment," "* * * The only help given by former U. S. examiner * * *," "* * * Let our expert (former Government examiner) prepare you for a position * * *," and, in some advertisements, invited those replying to send for free book, "How to Secure a Government Position," and, in others, for free list of Government jobs, salaries paid, etc., and set forth, on catalogs mailed to those replying, purported facsimile of certificate of appointment of said principal as member and secretary of the local board of civil service examiners, with date of appointment omitted in case of some, and words, in large type, "I was a Gov't Civil Service Examiner for years" and, below, "Proof of my former connection with the Civil Service Commission," and, on letterheads, set forth that such individual was civil service expert with 34 years' civil service experience;

Facts being they had no jobs at their disposal, could not in any way influence or control appointments to positions in classified civil service of the United States, nor be of assistance to prospective appointees other than by instructing them so that they might be better prepared for the

necessary examinations to be placed upon the eligibility rolls, neither they nor anyone else had been authorized by Commission in question to conduct schools for such purpose, they had no advance information regarding examinations or appointments to positions in the classified civil service involved except such as given to the public at large, and said principal's experience of 11, and not 34, years in the classified civil service, including part time work as local representative of said commission some 25 or more years theretofore, and involving such matters as the opening and distribution of examination papers in the presence of those assembled to take such examinations and the collection of the examination papers when completed for return to the said commission, but not the preparing of examinations or the marking of the papers, was not such as to give him expert qualifications on civil service examinations, irrespective of the change in the subject matter during the course of the years which had followed since said individual had had said Government experience, and the changed conditions presently prevailing in the matters involved, and less than 10 percent of those taking examinations for positions in the entire service during last decade received appointments; and

(*b*) Included in enrollment agreement which customers or students were required to sign, so-called money-back agreement providing for return to subscriber of all the money paid by him, predicated upon prompt payment of tuition installments as due, completion of course of study prescribed as directed, and either failure to pass examination for which course was intended to prepare subscriber or, in event, of passing same, failure to have appointment offered within period of eligibility;

Facts being that subscriber or student was not advised that no examinations might be held for several years in a number of subjects, and that many months are usually required before papers have been examined and grades published, months and sometimes years may pass before person placed on eligibility list or register is appointed to position, and that proportion of persons passing examination is small and proportion of appointments from such number smaller still, and such money-back agreement did not represent facts and was definitely misleading, and amount of money refunded by them and number of refunds were negligible;

With capacity and tendency to confuse, mislead and deceive members of public and induce such members to subscribe to courses of study sold by said individuals in erroneous belief that they in some way controlled appointments to positions in question, and that said principal, in charge of the lessons and instruction service, was in some way connected with said Civil Service Commission and could, therefore, assure patrons of school that they would receive appointments immediately upon completion of the course of instruction sold subscribers, and with result that patronage was diverted unfairly to them from schools conducted by competitors which did not make same or similar claims and representations concerning their said schools or courses of instruction:

Held, That such claims and representations were all to the injury of the public and competitors and constituted unfair methods of competition.

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

Mr. Harry D. Michael and *Mr. William L. Pencke* for the Commission.

Spencer, Ogden, Spencer & Gandy, of Rochester, N. Y., 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 Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually, and doing business under the name and style of Patterson School, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondents, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, doing business under the name and style of Patterson School, are now and have been since on or about January 8, 1937, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. The office and principal place of business of said respondents in the conduct of said business is located at 82 St. Paul Street, in the city of Rochester, State of New York. Prior to said date said business was owned and conducted by said Arthur Patterson individually under said trade name and had been so conducted by him for more than one year prior to said time. At the present time and since January 8, 1937, the respondent, Arthur R. Patterson, is and has been the principal of said school and its directing head, while the remaining respondents are and have been actively engaged in the conduct thereof. All of said respondents share in the ownership, direction, management, and operation of said business. Said respondents, in the course and conduct of their business during the time aforesaid, caused and do now cause their said courses of study and instruction to be transported from their place of business in New York to, into and through States of the United States other than New York to the various purchasers thereof in such other States.

PAR. 2. During the time above mentioned, other individuals, firms and corporations in various States of the United States are and have

been engaged in the sale and distribution in commerce, between and among the various States of the United States and in the District of Columbia, of courses of study and instruction intended for preparing students thereof for examinations for civil service positions under the United States Government and also of courses of study and instruction in other lines, all of which are pursued by correspondence. Said respondents have been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States in the sale of their said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. In the sale of said courses of study and instruction, respondents make use of advertisements inserted in newspapers and magazines circulated to the general public in the various States of the United States and also printed advertising matter mailed or delivered direct to prospective students throughout the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondents have positions under the United States Government to offer or which are under their control or which they can secure for students taking their courses. Examples of such representations are the following:

HELP WANTED
MALE----------
$1260 to $2100 YEAR

start working for United States Government. Patterson prepares you. 48-page booklet free, details. Box 1947, News. See Classification No. 34.

Which of these Gov't. Jobs Do You Want? No special education or experience usually required * * * Extra Social Security jobs expected soon * * *

Get One of These New Jobs with The U. S. Government * * * Select Job you want * * *

We will advise you where your examination will be held, and how to pass it with a high rating for early appointment.

In truth and in fact respondents are not connected with the United States Government or the United States Civil Service Commission and they do not have at their disposal positions under the United States Government, nor do they have control over appointments thereto. Neither can they place their students in Government positions or give them assistance in that respect other than to give them

instruction intended for preparing them for examinations held for the purpose of securing eligibles for appointments under the Classified Civil Service.

PAR. 4. By the means aforesaid, respondents further represent that said respondent, Arthur R. Patterson, has particular qualifications and exclusive information which specially qualify him and said school for preparing students to successfully pass civil service examinations; that a one time official connection with a local civil service examining Board was of recent date and was of such a nature as to give him special knowledge of present day methods used in conducting such examinations and as to the subject matter of such examinations. Such representations are made in various ways, among which is that of reproducing said Arthur R. Patterson's certificate of appointment to the office above mentioned without the date thereof and without any date being given as to the time of its issuance. In connection with the reproduction of said certificate respondents make the following statements in regard to said respondent, Arthur R. Patterson, and his said previous connection:

PROOF OF MY FORMER CONNECTION WITH
THE CIVIL SERVICE COMMISSION

The above is a photographic reproduction of my appointment, by the President of the United States Civil Service Commission, as a member and secretary of the Board of Civil Service Examiners at Rochester, N. Y., for the Second Civil Service District. I was a member of this Board for 8 years.

There is no better proof possible, than this photograph of my appointment, that I am exactly what I represent myself to be.

Many other representations to the same general effect as that above stated are also made by respondents in advertisements and advertising matter, of which the following are examples:

* * * Patterson ex-U. S. civil service exam. prepares you. * * *

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* * * Let our expert (former Government examiner) prepare you for a position in the Social Security, Rural Carrier, Post Office, Customs and other branches * * *.

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33 years Civil Service experience.

By the means aforesaid and as previously shown respondents represent that said Arthur R. Patterson has had 33 years official connection with the United States Civil Service and that he was a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of 8 years.

In truth and in fact said respondent, Arthur R. Patterson, has had no recent connection with the United States Civil Service Commission or any of its branches. The position with a local examining board to which reference is made in respondents' advertising material was held by him more than 25 years ago. Such connection gave said respondent no special knowledge of present day methods used by the United States Civil Service Commission in conducting its examinations or of the subject matter thereof. The methods and subject matter used in conducting said examinations today vary materially from those used during the time said respondent was connected with a local board as aforesaid. Said respondent, Arthur R. Patterson, has no present means and has had no recent means of procuring information and knowledge as to present day methods of conducting examinations by the United States Civil Service Commission and as to the subject matter thereof that is not available to any member of the public. He has not had 33 years official connection with the United States Civil Service nor was he a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of 8 years.

PAR. 5. By respondents' advertising matter and by use of a "money-back agreement" entered into with students, respondents represent either directly or by implication that students taking their courses will either be appointed to a Government position or, if not, that money paid for their courses will be refunded. Said "money-back agreement" in respondents' contracts reads as follows:

It is distinctly understood that if I make my payments promptly as agreed; complete the course as directed; and if I then fail to pass the examination (or examinations) for which your course prepared me, or pass but am not offered an appointment during my period of eligibility,[1] EVERY CENT THAT I HAVE PAID WILL BE PROMPTLY REFUNDED WITHOUT QUESTION.

Other representations made in connection with or in reference to said so-called "money-back agreement" are the following:

Read this money-back contract carefully. It is your protection.

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* * * This agreement puts everything on our shoulders. It plainly states that you must get results. If you do not, back comes your money * * *.

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* * * I am giving you proof of what is *behind* my method of training, and a Money-Back Agreement that completely protects you * * *

No cost if unsuccessful.

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[1] The period of eligibility is usually one year, but may be extended in the discretion of the Civil Service Commission.

In truth and in fact said agreement does not operate so as to effect a return of money paid by respondents' students in the event they do not get civil service positions with the United States Government. Said agreement depends upon the holding of a civil service examination or examinations for the respective positions for which respondents' students may prepare. At certain times and at certain places where such students may be located examinations for positions for which they may prepare are not held at all or may not be held for such long periods of time that such agreement is inoperative and meaningless and of no practical benefit to students of said school in such cases. In those instances students cannot qualify for a refund and neither can they qualify for or secure a Government position.

PAR. 6. The representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the mistaken belief that respondents control appointments under the United States Civil Service or have such positions to offer, or that they can place their students in such positions; that respondent, Arthur R. Patterson, has had recent official connection with the United States Civil Service and that he has special knowledge and information as a result thereof which particularly enables him and said school to successfully prepare students for civil service examinations and positions; that said Arthur R. Patterson has had 33 years official connection with the United States Civil Service and that he was a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of eight years; that money paid for said courses will be refunded if no Government position is secured and that students of said school can in all cases qualify for or be eligible for such refunds, when such are not the facts. As a result of such mistaken beliefs members of the public purchase and pay for respondents' courses of study and instruction and pursue the same. Thereby trade is unfairly diverted to respondents from competitors engaged in the sale in interstate commerce of correspondence courses intended for preparing students thereof for civil service examinations as well as from those so engaged in such sale in other lines of study.

There are among the competitors of respondents those who do not make the same or similar misleading representations in the sale of their said courses, as aforesaid, as those made by respondents as herein set out. As a result of respondents' said practices, as herein set forth, substantial injury has been and is now being done by respondents to competitors in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respondents 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 the Federal Trade Commission Act, the Federal Trade Commission on September 18, 1937, issued its complaint in this proceeding and caused same to be served upon the respondents, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually, and doing business under the name and style of Patterson School, with principal place of business at Rochester in the State of New York, 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 a joint answer thereto by said respondents, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael and William L. Pencke, attorneys for the Commission, and in opposition to the allegations of the complaint by Spencer, Ogden and Spencer, attorneys for the respondents, before William C. Reeves, an examiner for 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, and the oral argument of counsel for the Commission and for the respondents, 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. In 1911, the respondent, Arthur R. Patterson, in partnership with a brother, organized a school at Rochester, New York, which for a time was known as "Patterson's Civil Service School" and later as "Patterson's School," which partnership continued until 1920, when said respondent became the sole owner of the school and continued to conduct same until January 1, 1937, when he sold it to the

respondents Albert C. Kehr, Arthur W. Edson, Eva O. Brown and Minnetha Coe, who since said date have carried on the business of the school. As a part of the consideration for the sale of the school the said purchasers agreed to employ said respondent Arthur R. Patterson in the conduct of the school, and since said sale said respondent Arthur R. Patterson has been in the employ of the present proprietors of the school at an agreed salary, with the title of principal, and has been in charge of the lessons and instruction service of the school. Part of the purchase price was made payable in installments, and all past due installments have been paid, but in case of default in the payment of any installment due in the future, said respondent Arthur R. Patterson would have the right under the contract of sale to take back the school. Prior to the sale of the school, each of the respondents, Albert C. Kehr, Arthur W. Edson, Eva O. Brown and Minnetha Coe, for a number of years had been connected with the school as an employee while it was owned and controlled by the respondent Arthur R. Patterson. At the present time, said business is operated by respondents Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, under the trade name and style of Patterson School, and by the respondent Arthur R. Patterson, who is employed by said four respondents as principal of the school, in charge of the lessons, the instruction service, and immediate supervision over all correction work, also supervising all changes which may be made in the instruction material. The purposes for which the school was organized and has been conducted have been the sale of courses of home study instruction to persons who expected to take examinations to be held by the Civil Service Commission of the United States for the purpose of providing lists of persons eligible for appointment to positions in the classified Civil Service of the United States. The courses of instruction so sold by the respondents are in printed form and are divided into 20 regular lessons, and have been given by the respondents by correspondence and have been sold to persons in various States of the United States. The lesson material has been sent by the respondents by mail from their place of business in Rochester in the State of New York through and into, or into, various other States of the United States to the respective purchasers thereof. When the lesson material is sent out, as stated, the persons to whom it is sent are expected to study same and to return to the respondents their papers containing answers to the questions or problems contained in the lesson material. In the conduct of their said business, the respondents have been, and are now, in active competition with various persons and corporations and other partnerships also engaged in the sale of courses of instruction of the same general

nature as those sold by the respondents, in commerce among several of the States of the United States.

PAR. 2. The respondent Arthur R. Patterson, from 1900 to 1911, was in the classified civil service of the United States, during which time he held various positions in the United States Post Office at Rochester, N. Y. On November 5, 1903, he was appointed by the United States Civil Service Commission as a member and assistant secretary of the Board of Civil Service Examiners for the United States Post Office Service at Rochester, N. Y., and later was made a member and secretary of said Board and performed the duties of said positions until May 15, 1911. As secretary of this board he was required to act as the local representative of the Civil Service Commission in giving out information concerning the dates and places of examinations, conditions of eligibility, et cetera, and to conduct examinations under the rules of the Civil Service Commission, but was not required to formulate the questions used in the examinations nor to examine and grade the papers turned in by any of the persons taking the examinations, and did not do so. Only a part of the time of the said respondent was required for the performance of his duties incident to his connection with this Board, and the hours of duty for his general work in the Post Office at Rochester were shortened so that he might perform the duties incident to said Board. When an examination was to be held by the Civil Service Commission at Rochester, N. Y., said respondent was sent notices to be posted in advance of each of the examinations and later packages of questions to be used in each of the examinations were sent to him, and when the persons taking any of the examinations were assembled, the packages of questions to be used in the examination were opened in the presence of the assembled class and copies of the lists of questions were distributed among the members of the class, and at the close of the examination the papers of those who had taken the examination were collected by the respondent and returned by him to the Civil Service Commission of the United States, but said respondent had no part in the preparation of said questions and did not grade the papers of the persons examined nor determine whether any of them should be placed on lists of persons eligible for appointment; the members and secretary of said local Board had no discretionary or policy-forming authority.

PAR. 3. As a means of contacting members of the public for the purpose of selling to them the courses of instruction described in paragraph 1 hereof, respondents have caused advertisements to be published in newspapers, magazines and other periodicals having general circulation in various States of the United States. No refer-

ence was made in these advertisements to the fact that respondents were in the business of selling courses of instruction but such advertisements contain the following among other statements and representations:

$1260 to $2100 year, to start working for the United States Government. Patterson prepares you.

Which of these gov't jobs do you want? No special education or experience usually required. * * * Extra Social Security jobs expected soon. * * *

Get one of these new jobs with the U. S. Government. * * * Select job you want.

Arthur R. Patterson (former gov't examiner) Principal, Patterson School. * * * We will advise you where your examination will be held, and how to pass it with a high rating for early appointment.

U. S. Gov't jobs. The only help given by former U. S. examiner. * * * * * * Let our expert (former government examiner) prepare you for a position in the Social Security, Rural Carrier, Post Office, Customs, and other branches.

In some of these advertisements, the request was made that members of the public send to respondents, without obligation, for a free book entitled "How to Secure a Government Position." In other of the advertisements the request was made that members of the public send to respondents for a free list of Government jobs, salaries paid, etc. Some of the advertisements were published in the classified columns under the heading "Help Wanted."

When responses to such advertisements were received by the respondents they sent to each of the persons responding a copy of their then current catalog. The catalogs distributed by the respondents prior to the fall of 1937 had on page 2 what purported to be a facsimile of the certificate of appointment of the respondent, Arthur R. Patterson, as a member and secretary at Rochester, N. Y., of the Board of Civil Service Examiners for the Second District with the date of such certificate omitted, but in the fall of 1937 the respondents got out a revised catalog which contained on its page 2 a facsimile of a certificate bearing the date of November 5, 1903. Immediately above the reproduction of said certificate in the said catalog were the words in large type "I was a Gov't Civil Service Examiner for years," and immediately below the reproduction of the certificate in the former catalogs were the words "Proof of my former connection with the Civil Service Commission." Respondents also have made use of letterheads in their business correspondence, which letterheads had printed matter thereon to the effect that the respondent, Arthur R. Patterson, was a civil service expert with 34 years' Civil Service experience.

PAR. 4. The respondents also have employed salesmen or solicitors for the enrollment of subscribers to the courses of instruction offered for sale by them, and the former owner of the school also employed solicitors for that purpose. The respondents also have a district manager, or western manager, for the Pacific Coast States and States adjacent thereto, with headquarters at Los Angeles, Calif. Such manager has had an exclusive territorial contract and has employed his own salesmen who have been under his supervision, and he has caused advertisements to be published on his own account. The respondents have had a similar arrangement with a manager for the city of Chicago and some counties adjacent thereto. Other solicitors or salesmen work under the direct supervision of the respondents. The enrollment in the school operated by the respondents in recent years has been approximately 3,500 each year, and the number of persons to whom instruction has been given by the respondents at any one time has varied from 1,600 to 2,000, this variation having been caused by the fact that some of the students complete the courses sooner than others. Persons enrolled by representatives of the respondents, are required to sign an enrollment agreement which contains a so-called "Money-Back Agreement," which provides in effect that if the subscriber make payment of the installments of tuition promptly when due, and complete the course of study prescribed, as directed, and then fail to pass the examination for which the course was intended to prepare him, or should pass the examination but not have offered to him an appointment in the classified Civil Service of the United States within the period of his eligibilty, then all of the money paid to the respondents by the subscriber would be returned to him. There is a general tendency toward eliminating money-back provisions of this nature from all such contracts for the reason that they usually are ambiguous and not fully understood by the subscriber. In the instant case, the objection to the money-back agreement lies not so much in the language used which is clear enough, but rather in the fact that several important conditions pertaining to the taking of the examinations, the eligibility, and the appointments of persons to civil service positions, affect the money-back agreement to such an extent that it is meaningless in a great many instances for all practicable purposes. Thus the subscriber to the course is not advised that no examinations may be held for several years in a number of subjects; that it usually takes many months before the papers have been examined and the grades published; that it may be months and sometimes years before a person placed on the eligibility list or register is appointed to a position; that the proportion of people passing the

examinations is small; and appointments from that number smaller still. When these and other conditions are considered, it is obvious that the money-back agreement does not represent facts and is definitely misleading. The amount of money refunded by the respondent and the number of such refunds are negligible.

PAR. 5. The respondents have no jobs at their disposal and cannot in any way influence or control appointments to positions in the classified civil service of the United States, and can be of no assistance to prospective appointees to such positions except by instructing them so that they might be better prepared to take the necessary examinations to have their names placed upon the eligibility rolls. The United States Civil Service Commission has not authorized the respondents or anyone else to conduct schools for the purpose of instructing persons who expect to take examinations to be conducted by the Civil Service Commission for the purpose of providing lists or eligibles from which appointments may be made to positions in the classified Civil Service of the United States. The school conducted by the respondents, and similar schools, do not have any advance information regarding civil service examinations or appointments to positions in the classified civil service of the United States, except such information as is given to the public at large.

PAR. 6. Frequent mention is made in the advertisements and advertising matter of the respondents of the claimed valuable experience and the supposedly superior training of the respondent Arthur R. Patterson for conducting a school of the kind conducted by the respondents, and the claim is made that the courses of instruction sold by the respondents are given under the personal supervision of the respondent Patterson, who is described in said advertisements and advertising matter as a civil service expert and former civil service examiner with 34 years' civil service experience. Said respondent held positions in the classified Civil Service of the United States for only 11 years, which service ended in 1911, and since that time he has been connected with the school now operated by the respondents. The service performed by said respondent as a member and secretary of the Board of Civil Service Examiners at Rochester, N. Y., from November 5, 1903, to May 15, 1911, would not be sufficient to give him expert qualifications on Civil Service examinations, and due to the changed conditions now prevailing, a familiarity with Civil Service examinations held in the period between 1903 and 1911 would not give anyone special qualifications in preparing others for present day examinations. Conducting a school such as that conducted by the respondents could not be regarded as civil service experience.

PAR. 7. By reading the advertisements and advertising matter of the respondents, the casual observer would be likely to get the impression that he would be assured of a position in the classified Civil Service of the United States merely by completing the course of study and instruction sold by the respondents, whereas there might not be even a chance to take an examination for a long period of time, and after an examination is taken only a small proportion of those making passing grades are given appointments. The last examination for railway postal clerks was held in 1935 and resulted in over 100,000 eligibles, and the names of nearly the whole number are still on the register and there is no likelihood that the register will be exhausted soon. 2,585 appointments were made from this register in 1937, and the list of eligibles is sufficient for any appointments that might be made for a number of years. The last examination for storekeeper gager was held in 1934, and 42,268 persons were examined and 8,684 got passing grades, of whom 805 received appointments. The last examination for immigration parole inspector was held in 1935; 36,116 were examined and 18,513 passed and 97 received appointments. In all classes of the service, the number of appointments as compared with the number of eligibles has been relatively small. In the past ten years only 9 percent of those taking examinations for positions in the entire service, have received appointments. Generally, the regular period of eligibility for appointment for those who have passed civil service examinations is 1 year, but the registers may be extended and usually are extended for 2 or 3 years or for longer periods.

PAR. 8. The claims and representations made by respondents in the advertisements which they have caused to be published and in the advertising matter which they have caused to be distributed as herein set out, are misleading and deceptive and have and have had the capacity and tendency to confuse, mislead, and deceive members of the public and to induce them to subscribe to the courses of study sold by respondents in the erroneous belief that respondents in some way control appointments to positions in the classified civil service of the United States, and that the respondent Arthur R. Patterson, the principal of the school and in charge of its lessons and instruction service, is in some way connected with the Civil Service Commission in the United States, and on that account could assure the patrons of the school conducted by the respondents that they would receive appointments in the classified Civil Service of the United States immediately upon the completion of the course of instruction sold by respondents, and as a result patronage has been diverted unfairly to respondents from schools conducted by competitors or respondents which competitors have not made the same or similar claims and

representations concerning the school conducted by them or the courses of instruction sold by them.

CONCLUSION

The claims and representations made by the respondents as hereinbefore set out are all to the injury of the public and to competitors of the respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 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 filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Nelson E. Spencer, 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually and doing business under the name and style of Patterson School, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of correspondence courses of study and instruction for civil service positions in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that:

1. Civil service positions are at the disposal of respondents, or that they can in any manner control appointments to civil service positions.

2. Respondents can assist applicants for civil service positions in any manner other than by preparing them to take civil service examinations.

3. Respondents have any information pertaining to examinations for civil service positions other than, or in advance of, regular official notices.

4. Jobs are available at all times; or, through the use of "Help Wanted" columns in newspapers and similar devices, that United

States Government jobs are open and that men and women may secure such jobs through respondents' school.

5. Under the money-back agreement the purchase price for the course of instruction will be refunded, unless and until all of the conditions under which said refunds are made are clearly and fully set forth.

6. Respondent Patterson is a civil service expert or has 33 years' civil service experience, or has any special knowledge qualifying him as an expert in preparing students for civil service examinations.

7. Respondent Patterson has acquired any special knowledge with respect to civil service examinations because of his former employment on a local board of the United States Civil Service Commission.

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

ADAH ALBERTY, TRADING AS ALBERTY'S FOOD PRODUCTS, ALBERTY'S FOOD LAB., ALBERTY'S FOOD LABORATORIES, THE ALBERTY FOOD LABORATORIES, CHENO LABORATORIES, CHENO PRODUCTS, AND U. S. OKEY

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

Docket 2875. Complaint, July 11, 1936—Decision, June 26, 1939

Where an individual engaged in sale of number of baby foods and alleged health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled, and sold, under various trade names, through medium of wholesale houses, doctors, and health food stores, principally, located throughout the various States, and, as thus engaged in distribution of her said preparations in commerce among the various States, in substantial competition with others engaged in interstate sale of such foods and preparations recommended for use in treatment of various conditions and ailments for which her respective products were sold and recommended; in extensively advertising the same through newspapers in various cities and health magazines, and through booklets and pamphlets describing her said products and furnished to food stores and by them distributed to public, and through advertising cuts furnished to recognized dealers for use in local newspaper advertising, expense of which she assumed in whole or half, as case might be—

(*a*) Falsely represented that her "Alberty's Food Regular" and "Alberty's Food Instant (new style)" rendered milk more readily digestible, and constituted a competent remedy, cure, or treatment for cancer or ulcer, and that her "Alberty's Food Instant (old style)" had therapeutic or medicinal value in treatment of many human ailments, and that her "Alberty's Food" rebuilt the intestinal tract and was the only food which accomplished such result, and that it eliminated rickets and other calcium starvation diseases in children, adults, and animals, and modified milk so that calcium element thereof was assimilated, and that through taking it more calcium and phosphorous were stored up in the body than would be accomplished through use of three or four times the quantity of ordinary milk, and that it was the only food discovered that offset acidosis, and was the most powerful alkaline food known, facts being preparations referred to had nutritional, rather than therapeutic, value, if any, did not render milk readily digestible and were without therapeutic or medicinal value in treatment of cancer or ulcer, and said new style preparation had no therapeutic or medicinal value in treatment of any other ailment, and said old style product possessed no more therapeutic value than that had by ordinary milk, and representations made by her, as aforesaid, were extravagant, misleading, and deceptive;

(*b*) Falsely represented that her said "Laxative Blend" affected the muscles of the intestines and was a new laxative blend which had therapeutic value, facts being said preparation was an irrational combination of materials, many of

which had folklore and household reputation as remedial agents several centuries ago, and majority of which were omitted from the Pharmacopeia as of no significant value in medicine, only active constituent contained therein was cathartic senna, and said product did not stimulate muscles of the intestines in a physiological sense and was without therapeutic value and not recognized by medical profession as proper medication;

(c) Falsely represented that her "Special Formula Tablets" constituted a tonic and would produce blood regeneration and increase sexual activities, and that her "Phenix Pluri-Gland Tablets for Men" and similarly designated preparation for women contained ingredients which would increase or stimulate such activity, facts being none of such various tablet preparations would increase such activity, and her said "Special Formula" would not act as a tonic or produce blood regeneration, all said various tablet preparations were without medicinal or therapeutic value, and Nux Vomica ingredient in "Special Formula" preparation, and thyroid and Ex-Nux Vomica content of latter, rendered their use potentially dangerous;

(d) Falsely represented that her "Phosphate Pellets" and "No. 3 Tablets" had medicinal or therapeutic value in the treatment of various human ailments, facts being former was a polypharmacal mixture of insoluble phosphates of calcium, iron, soda, and potassium, doses contained therein were too small to do any good, such combination is not recognized generally by doctors of either allopathic or homeopathic school as competent medication, latter was similar mixture of number of obsolete drugs, containing number of materials with no recognized or significant action on living tissues, contained unrelated and counteracting or incompatible materials in physiological sense, and was not recognized generally by medical profession as competent medication, and neither product possessed therapeutic or medicinal value;

(e) Falsely represented that her "Cheno Combination Tablets" and her "Cheno Herb Tea" contained ingredients, in case of former, which would have influence on fat metabolism and, in case of latter, which would also produce weight reduction, facts being former contained no ingredient which would have significant influence on said metabolism, and latter contained no ingredient which, in and of itself, caused or produced any reduction in weight or had any such effect, but was an irrational, unjustified combination of materials which might produce undesired effects on sensitive person if taken in self-medication, neither was recognized by medical profession as competent medication, and only reduction in weight caused by former would be such as was due to increased bowel movement, and it was without medicinal or therapeutic value, and only such value of latter would be that of its mild laxative action due to senna contained therein;

(f) Represented that her "Diabetic" constituted a competent remedy, cure, or treatment for diabetes, facts being said preparation consisted of a dehydrated vegetable mixture of watercress, spinach, lettuce, celery, cauliflower, beet leaves, and asparagus, was not a remedy for diabetes, had no relation to said ailment or condition, and had no therapeutic or medicinal value, but food value, chiefly;

(g) Misrepresented cause of and effect of excess of magnesium in the body and character and properties of said substance, and effect on system of a lack thereof, and results and benefits accruing from the taking thereof, and, falsely represented that she was the first person in the United States to

recognize its value, and that it was a great rejuvenative agency, and that the taking of her said food supplied the necessary calcium to the body in proper quantities, and that stunted growth, tooth decay, acidosis, sickness, suffering, premature old age, and death were due either to lack of, or inability to assimilate, calcium;

(*h*) Deceptively represented that the spleen controls the sex organs, and that acid fruits or vinegar, as "foreign acids," destroy red blood corpuscles and have detrimental effect on the spleen, and that acidosis is one of the contributing causes of waning sex life, and that her gland treatment would produce or bring about beneficial results to user;

(*i*) Deceptively represented that bismuth subnitrate had a soothing effect on the digestive tract and was a valuable harmless remedy, and that gall bladder should never be removed;

(*j*) Represented that her various products had a value and efficacy which they did not possess, through citing case histories of users thereof which were not true, and through use of testimonials which were untrue in fact or which were not given by person alleged to have given such testimonial; and

(*k*) Represented, through use of word "laboratory" and references to discoveries by her said "laboratories" and through other references thereto, and the alleged part in the discovery, etc., of preparations in question, in her trade name and otherwise, that she conducted, operated, or maintained a laboratory for the purpose of manufacturing, testing, and experimenting with the various preparations sold by her, notwithstanding fact she did not own, operate, or maintain any laboratories or manufacture or test any of her said various preparations;

With capacity and tendency to mislead and deceive public into erroneous and mistaken belief that the various preparations sold and distributed by her had the therapeutic value represented by her, and that the use of such products would result in the benefits indicated to the user, and to induce such purchasing public to buy said preparations in preference to others designed and sold for the treatment of the various ailments for which her respective products were recommended and offered by manufacturers, retailers, and distributors, and with result, by reason of the use of such false, deceptive, and misleading representations, of diverting unfairly trade in commerce to her from distributors of other preparations for use in in treating the various ailments for which her respective products were recommended, and 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. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. W. I. Gilbert, Jr., of Los Angeles, Calif., for respondent.

Complaint

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

Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, 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, Adah Alberty, is an individual trading and doing business under the names and styles of Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, with her office and place of business located at 729 Seward Avenue in the city of Hollywood, within the State of California. Said respondent is now and for more than 3 years last past has been engaged in the sale of a number of baby foods and health preparations under various trade names, and in the distribution thereof between and among the various States of the United States. Respondent causes said baby foods and health preparations, when sold by her, to be transported in interstate commerce to the purchasers thereof located in the various States of the United States. There is now, and for more than 3 years last past has been, a constant current of trade and commerce by respondent in said baby foods and health preparations between and among the various States of the United States. In the course and conduct of her business the said respondent is now and for more than 3 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 interstate sale of baby food and health preparations.

PAR. 2. Among the various baby foods and health preparations sold by said respondent are preparations known and designated as follows:

Regular Alberty's Food.
Instant Alberty's Food—(old form).
Instant Alberty's Food—(new form).
Alberty's Phosphate Pellets—(formerly called Nerve Food Pellets).
Alberty's CA-MO—(formerly called Calcatine products).
Alberty's Laxative Blend—(formerly called German Herb Lax-Tonic).
Cheno Combination Tablets—(formerly called Restorex Cheno Tablets).
Cheno Phytolacca Berry Juice.
Cheno Herb Tea.
Alberty's No. 3 Tablets—(formerly called Alberty's Spleen and Iron Tablets).
Alberty's Special Formula Tablets—(formerly called Hemoglobin Tonic Tablets).
Alberty's Labara Tablets—(formerly called Labara cell salts).

Alberty's Herb Laxative.
Alberty's Vegetable Compound Capsules.
Alberty's Phenix Pluri-Gland Tablets for Women.
Alberty's Phenix Pluri-Gland Tablets for Men.
Malto-De.
Alberty's Dextrose.
Concentrated Melorlpe Banana Powders.
Alberty's Cero-Fig Coffee.

All of said preparations are manufactured for said respondent by various manufacturing druggists located throughout the United States and are purchased from said manufacturers by said respondent. Said preparations are packed and bottled by said respondent and are then labelled and sold by said respondent throughout the United States through wholesale houses and doctors and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and health preparations sold and distributed by her. As media of advertising said respondent has used and is now using newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets.

In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores and these booklets and pamphlets are in turn distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers who insert the advertisements in local newspapers in the cities in which they are located. In some instances said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. Said respondent, in her said advertisements of baby foods and health preparations sold by her, has made and is now making various false, deceptive, and misleading statements concerning the therapeutic value and benefits to be achieved by using said baby foods and health preparations sold and distributed by said respondent, among which said false, misleading, and deceptive statements are the following:

It rebuilds the intestinal tract and is the only food yet discovered that does.

Laboratory tests show that magnesium and not calcium is the mineral which deposits itself wherever convenient, it being a sedative, sluggish, lazy mineral.

It was proved that magnesium excess is caused either by certain home remedies, or dietary errors, foods rich in magnesium and low in protein and calcium.

Calcium is the most difficult, being a "peppy," quick-acting mineral.

Magnesium gradually accumulates in every portion of the body as calcium lessens—causing acid excess and a dormant condition of cells, tissues, and nerve shafts.

The gall bladder should never be removed.

Mrs. Alberty, of the Alberty Laboratories, who has spent her life in the study of dietetics, discovered "the missing link."

Today our streets are filled with men and women of small statute—many of them less than five feet tall. They are weak, prematurely old, toothless and bald-headed, and yet many are not old in years.

The Alberty Laboratories were the first concern in the United States to recognize the real value of this wonderful life-giving substance—calcium.

Over 800,000 people will die this year from preventable diseases caused by faulty diet!

The spleen seems to take first place in connection with the sex organism. For instance, when women in advanced cases of anemia cease to menstruate, the spleen is the first organ in the body involved. The spleen must first be aroused into activity before normal sex life can fully be restored.

Acidosis is one of the contributing causes of waning sex life.

Acid fruits or vinegar being "foreign acids," have a detrimental effect on the spleen, destroying red blood corpuscles.

Alberty's Food is the combination that unlocks this wonder-working calcium, exposing the "Guarded Treasure" to the digestive juices.

Never before has anyone thought of, or attempted to combine a nerve restorer with a gland rejuvenator.

It has been said that Mrs. Alberty's discovery will revolutionize gland treatment.

Sperum (from the interstitial cells of Leydig). It increases dynamos—muscular, nervous and sexual, and it hemostimulates the gonads. Its effect on the sex organism is very marked and never fails to give satisfactory results.

The cause of stunted growth, tooth decay, acidosis, sickness, suffering, premature old age, and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

Sickness, suffering, premature old age, and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

That Alberty's Food eliminates rickets and other calcium-starvation diseases in both children, adults, and animals, is now being recognized by many physicians throughout the United States.

That Alberty's Food does modify milk so that the calcium element is assimilated is a proven fact beyond dispute.

Tests have proved conclusively that more calcium and phosphorus are stored up in the body in normal amounts, by using *Alberty's Food* even when the intake of ordinary milk is three or four times greater than the quantity of *Alberty's Food* used.

Long ago, the Alberty Laboratories discovered that calcium was a great rejuvenating agency. People taking the Alberty Treatment looked years younger and felt that way.

Alberty's Food is the only food ever discovered that does offset acidosis. Acidosis can only be neutralized by a powerful alkaline—the Alberty Combination makes the most powerful alkaline food known.

Bismuth subnitrate has a soothing effect on the digestive tract and is a valuable harmless remedy.

PAR. 5. Said respondent, Adah Alberty, in the regular course and conduct of her said business trades under various names, among which are Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, and Cheno Laboratories, whereas in truth and in fact said respondent does not maintain or operate any laboratory, does not manufacture the products sold and distributed by her, and does not test any of the said products, but confines her activities to packing, bottling, and labeling the said preparations which are bought by her in bulk from various manufacturers.

PAR. 6. The use by the said respondent, Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraph 4 hereof, and the use by the said respondent of said various trade names containing the words "laboratory" and "laboratories" as alleged in paragraph 5 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various baby foods and health preparations sold by said respondent have great therapeutic value and that the use of the same will result in material benefit to the user, and that the said respondent maintains and operates laboratories where said products are manufactured and tested by her, and has thereby induced, and does now induce, the consuming public and especially that portion of the public which purchases baby foods and health preparations, acting in said erroneous belief, to purchase the baby foods and health preparations sold and distributed by said respondent in preference to baby foods and health preparations offered for sale by manufacturers and other distributors of baby foods and health preparations who do not falsely, deceptively, and misleadingly advertise their said products. As a result of such false, deceptive, and misleading representations on the part of said respondent, and contained in various books and pamphlets, instrumentalities are placed in the hands of food stores and dealers throughout the country who, by distributing the same to the public, thereby are enabled to dispose of respondent's products in preference to products which are truthfully advertised. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade has

been diverted to respondent from such manufacturers and distributors of baby foods and health preparations who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury has been done, and is being done, by said respondent.

PAR. 7. Said false, deceptive, and misleading representations of said respondent contained in her 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, 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 11th day of July 1936, issued and served its complaint in this proceeding upon the respondent, Adah Alberty, an individual, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, charging her 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 Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint, by W. I. Gilbert, Jr., 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, counsel for the respondent having not requested oral argument; and the Commission having duly considered the same and being fully advised in the premises, found that this proceeding was in the interest of the public and made its findings as to the facts and its conclusion drawn therefrom. Thereafter, on motion of counsel for the respondent the Commission reopened the case for the taking of further testimony as to the therapeutic value of the various preparations sold by the respondent, and additional testimony and other evidence in support of the allega-

tions of the complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint, by W. I. Gilbert, Jr., attorney 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 modified findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Adah Alberty, is an individual trading and doing business since September 1935 under the name and style of Alberty's Food Products. Prior to September 1935, said respondent conducted her said business under the names of Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey. Respondent maintains her office and place of business at 729 Seward Avenue in the city of Los Angeles within the State of California. The respondent is now, and for more than 3 years last past has been, engaged in the sale of a number of baby foods and alleged health preparations under various trade names, and in the distribution thereof in commerce between and among the various States of the United States. Respondent causes said baby foods and alleged health preparations when sold by her to be transported from her aforesaid place of business in the State of California to the purchasers thereof located in the various States of the United States other than California. There is now and for more than 3 years last past has been a constant current of trade and commerce by respondent in said baby foods and alleged health preparations between and among the various States of the United States. In the course and conduct of her business the respondent is now, and for more than 3 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 interstate sale of baby foods and health preparations recommended for use in the treatment of the various conditions or ailments for which respondent's respective products are sold and recommended.

PAR. 2. Among the various baby foods and alleged health preparations sold by said respondent are preparations known and designated as follows: Regular Alberty's Food; Instant Alberty's Food (old form); Instant Alberty's Food (new form); Alberty's Phosphate Pellets (formerly called Nerve Food Pellets); Alberty's Ca-Mo (formerly called Calcatine Products); Alberty's Laxative Blend (for-

merly called German Herb Lax-Tonic); Cheno Combination Tablets (formerly called Restorex Cheno Tablets); Cheno Phytolacca Berry Juice; Cheno Herb Tea; Alberty's No. 3 Tablets (formerly called Alberty's Spleen and Iron Tablets); Alberty's Special Formula Tablets (formerly called Hemoglobin Tonic Tablets); Alberty's Labara Tablets (formerly called Labara Cell Salts); Alberty's Herb Laxative; Alberty's Vegetable Compound Capsules; Alberty's Phenix Pluri-Gland Tablets for Women; Alberty's Phenix Pluri-Gland Tablets for Men; Malto-De; Alberty's Dextrose; Concentrated Meloripe Banana Powder; Alberty's Cero Fig Coffee, and Diabetic.

All of said preparations are manufactured for said respondent by various manufacturing druggists and chemists located throughout the United States and are purchased by the respondent from said manufacturers. Respondent packs, bottles, and labels said preparations and sells them throughout the United States through the medium of wholesale houses and doctors, and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and alleged health preparations sold and distributed by her. As media of advertising said respondent has used, and is now using newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets. In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores, and these booklets and pamphlets are in turn distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers, who insert the advertisements in local newspapers in the cities in which they are located. In some instances said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. The respondent, in her said advertisements of baby foods and alleged health preparations sold by her, has made, and is now making, various statements concerning the therapeutic value and benefits to be achieved by using said baby foods and alleged health preparations sold and distributed by respondent, among which said statements are the following:

It (Alberty's Food) rebuilds the intestinal tract and is the only food yet discovered that does.

It was proved that magnesium excess is caused either by certain home remedies, or dietary errors, foods rich in magnesium and low in protein and calcium.

Magnesium gradually accumulates in every portion of the body as calcium lessens—causing acid excess and a dormant condition of cells, tissues and nerve shafts.

The gall bladder should never be removed.

The Alberty Laboratories were the first concern in the United States to recognize the real value of this wonderful life-giving substance—calcium.

Over 800,000 people will die this year from preventable diseases caused by faulty diet!

The spleen seems to take first place in connection with the sex organism. For instance, when women in advanced cases of anemia cease to menstruate, the spleen is the first organ in the body involved. The spleen must first be aroused into activity before normal sex life can fully be restored.

Acidosis is one of the contributing causes of waning sex life.

Acid fruits or vinegar being "foreign acids," have a detrimental effect on the spleen, destroying red blood corpuscles.

Alberty's food is the combination that unlocks this wonder-working calcium, exposing the "Guarded Treasure" to be digestive juices.

Never before has anyone thought of, or attempted to combine a nerve restorer with a gland rejuvenator.

It has been said that Mrs. Alberty's discovery will revolutionize gland treatment.

Sperum (from the interstitial cells of Leydig). It increases dynamos—muscular, nervous, and sexual, and it hemostimulates the gonads. Its effect on the sexorganism is very marked and never fails to give satisfactory results.

The cause of stunted growth, tooth decay, acidosis, sickness, suffering, premature old age, and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

That Alberty's Food eliminates rickets and other calcium-starvation diseases in both children, adults, and animals, is now being recognized by many physicians throughout the United States.

That Alberty's Food does modify milk so that the calcium element is assimilated, is a proven fact beyond dispute.

Tests have proved conclusively that more calcium and phosphorous are stored up in the body in normal amounts, by using *Alberty's Food* even when the intake of ordinary milk is three or four times greater than the quantity of *Alberty's Food* used.

Long ago, the Alberty Laboratories discovered that calcium was a great rejuvenating agency. People taking the Alberty Treatment looked years younger and felt that way.

Alberty's Food is the only food ever discovered that does offset acidosis. Acidosis can only be neutralized by a powerful alkaline—the Alberty Combination makes the most powerful alkaline food known.

Bismuth subnitrate has a soothing effect on the digestive tract and is a valuable harmless remedy.

The above and foregoing representations made by said respondent concerning her said baby food and alleged health preparations and contained in her advertisements thereof are extravagant and deceptive and misleading.

PAR. 5. Respondent does not own, operate, maintain, or control, any laboratories, and she does not manufacture or test any of the various baby foods and alleged health preparations which are sold and distributed by her in interstate commerce.

PAR. 6. Respondent's preparation Labara Pellets are Homeopathic pellets known as "Natrum Sulphate."

Respondent's preparation Alberty's Phosphate Pellets are homeopathic pellets composed of $\frac{1}{1000}$ grain each of potassium phosphate, sodium phosphate, iron phosphate, and calcium phosphate. Respondent represents in her advertising that said preparation is of medicinal or therapeutic value in the treatment of various human ailments. These pellets are a polypharmacal mixture of insoluble phosphates of calcium, iron, soda and potassium, the doses contained therein are too small to do any good, and the preparation is without therapeutic value. Such a combination is not recognized generally by either allopathic or homeopathic doctors as competent medication.

Respondent's preparation Alberty's Laxative Blend (formerly called German Herb Lax-Tonic) consists of senna, fennel seed, uva-ursi leaves, licorice root, buckthorn, dog grass, anise seeds, nettle leaves, sassafras bark, shave grass, yarrow, peppermint, althea wood, guaiac wood, elder flowers, ononis root, and buchu leaves. Respondent represents said preparation to be a new Laxative blend which has a therapeutic value. This preparation is an irrational combination of materials, many of which had a folklore and household reputation as remedial agents in the fifteenth and sixteenth centuries. A majority of the ingredients contained in this preparation have been omitted from the United States Pharmacopeia as being of no significant value in medicine. The only active constituent contained therein is Senna, which is a cathartic. The remainder of the constituents are obsolete and are without additional value. The cathartic action of the preparation is due to Senna, but the Senna contained therein does not stimulate the muscles of the intestines in a physiological sense of stimulation, and the preparation is without therapeutic value, and is not recognized by the medical profession as proper medication.

Respondent's preparation Cheno Combination Tablets (formerly called Restorex Cheno Tablets) are composed of spinach, celery and leaves, okra, Irish moss, rhubarb root, rhubarb stock, Dulse, calcium mix, and water mixed with glucose. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of obesity and that its use will bring about a reduction in weight. This preparation contains no ingredient which would have a sig-

nificant influence on fat metabolism, and the only reduction in weight caused by the preparation would be such a reduction as was due to increased bowel movement. The preparation is not accepted by the medical profession as proper medication, and is without medicinal or therapeutic value.

Respondent's preparation Alberty's No. 3 Tablets (formerly known as Alberty's Spleen and Iron Tablets) are composed of Spleen substance desiccated, 1 grain; Gaduol, $\frac{3}{5}$ grain; Reduced iron, 1 grain; Zinc Phosphate, $\frac{1}{20}$ grain; Berberine Sulphate neutral, $\frac{1}{32}$ grain; Powdered ginger $\frac{1}{4}$ grain; Strychnine Sulphate, $\frac{1}{960}$ grain. Respondent represents in her advertising that said preparation has a medicinal or therapeutic value in the treatment of various human ailments. This preparation is a polypharmacal mixture of a number of obsolete drugs. The preparation contains a number of materials which have no recognized or significant action on living tissues and is not recognized generally by the medical profession as competent medication. The preparation contains unrelated and counteracting or incompatible materials in the physiological sense, and has no therapeutic or medicinal value.

Respondent's preparation Cheno Tea is composed of kelp, bean shells, senna, peppermint, black alder bark, sassafras, chic weed, rest hara, ivy leaves, licorice root, fennel, anise, and coriander. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of obesity and that its use will bring about a reduction in weight. Said preparation does not contain any ingredient which in, or of, itself causes or produces any reduction in the weight of the user, nor does it have any effect on the metabolism of fat. It is an irrational, unjustified combination of materials which may produce undesired effects on a sensitive person if taken in self medication, and is not generally recognized by the medical profession as competent medication. Its only therapeutic value would be that of a mild laxative action due to the presence of senna in the preparation.

Respondent's preparation Diabetic is a dehydrated vegetable mixture of watercress, spinach, lettuce, celery, cauliflower, beet leaves and asparagus. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of diabetes. This preparation has no relation to diabetes. The preparation is not a remedy for diabetics, and has no therapeutic or medicinal value. Its value would be chiefly a food value.

Respondent's preparation Pluri-Gland Tablets for Men are composed of orchic substance, 3 grains; thymus, 1 grain; thyroid U. S. P., $\frac{1}{10}$ grain; pituitary whole, $\frac{1}{4}$ grain; ex-nux vomica, $\frac{1}{10}$ grain. Re-

spondent's preparation Pluri-Gland Tablets for Women are composed of ovarian residue, 3 grains; pituitary whole, ¼ grain; thyroid U. S. P., $\frac{1}{10}$ grain; ex-nux vomica, $\frac{1}{10}$ grain; orchic substance, 2 grains. Respondent represents that said preparations possess a therapeutic or medicinal value and that the use of said preparations will serve to increase or stimulate sex activity. Said preparations are not generally accepted by the medical profession as proper medication. The preparations contain nothing which would increase sex activity. Said preparations are without medicinal or therapeutic value, and their use may be dangerous due to the thyroid and the ex-nux vomica contained therein.

Respondent's preparation Alberty's Special Formula is composed of orchic substances, spleen substances, pancreatin substance, calcium phosphate, manganese, hemoglobin, and nux vomica. Respondent represents that said preparation is a tonic, that it will produce blood regeneration, will increase sexual activity and that it has a medicinal or therapeutic value. Said preparation is not commonly accepted by the medical profession as proper medication. The preparation would not increase sexual activity, it would not act as a tonic, nor would it produce blood regeneration, and it has no medicinal or therapeutic value. Its use might be dangerous because of the presence of nux vomica therein.

Respondent's preparation Alberty's Food Regular is a special grind of cereals, wheat and barley. To each pound of cereal is added one ounce organized calcium and phosphate. This special cereal mix may be used as a milk modifier, or may be used as a cooked cereal, or to thicken gravy, etc. Respondent represents that said preparation has medicinal or therapeutic value in the treatment of a variety of human ills and maladies including cancer and ulcer and that its use in conjuction with milk renders the milk more readily digestible. Alberty's Food Regular has no therapeutic value. It is a food rather than a remedy. Any value possessed by said preparation would be nutritional rather than therapeutic. Its use in conjunction with milk would not render the milk more readily digestible, and it has no therapeutic or medicinal value in the treatment of cancer or ulcer.

Respondent's preparation Alberty's Food Instant (new style) is made from low butterfat condensed milk. The curd is subdivided by Regular Alberty Food, to which two ounces of organized calcium phosphate has been added to each pound of cereal. The condensed milk is first heated to 180° before the Regular Alberty Food is added. Then the mixture is pumped through a homogenizer at 3,000 pound pressure through a visculizer. It is then spray-dried

and vitamin D is added. Respondent represents in her advertising that the use of said preparation in conjunction with milk renders the milk more readily digestible and that it has a therapeutic or medicinal value and is an effective treatment for cancer or ulcer. Alberty's Food Instant (new style) has a nutritional rather than a therapeutic value. Its use in conjunction with milk does not render the milk more readily digestible and it has no therapeutic or medicinal value in the treatment of cancer, ulcer, or any other ailment of the human body.

Respondent's preparation Alberty's Food Instant (old style) is no longer made. It was formerly prepared in the same manner as the New Style Instant Alberty Food except that the condensed milk was dried on rollers and no vitamin D was added. Respondent in her advertising directly and indirectly represented that said preparation had a therapeutic or medicinal value in the treatment of many human ailments. Said preparation in fact possessed no more therapeutic value than would be possessed by ordinary milk.

PAR. 7. Respondent, in a booklet entitled "Calcium—The Staff of Life," which said booklet was written by the respondent and is distributed by her in aid of the sale of her said preparations, in connection with various photographs contained therein, gives the case history of various users of her said preparations and states what are purported to be the results obtained by the respective users of her said preparations. The photographs exhibit persons either in apparent health or, for the purpose of contrasting the apparent comparative health of the person, exhibit the persons before and after using the preparations.

In one case respondent misrepresents the condition of the patient after taking her preparation in that she represents the patient to have been suffering with ulcers in the duodenum and pylorus, as being forced to live on a liquid diet and being unable to work, and that after taking Alberty's Food he was able in 3 weeks' time to go to work, in 2 months' time he had gained 8 pounds, and can now eat solid food and works every day. As a matter of fact, the patient, after using her treatment, is still suffering with ulcers in the duodenum and pylorus, he was unable to go to work within 3 weeks after starting to use Alberty's Food, and although he gained some weight, he was, at the same time during which he took respondent's treatment, living on a diet and following practices that would naturally tend to increase his weight, and he was unable in 2 months to work every day and eat solid food.

In said pamphlet, respondent also represented that a certain Albert Smith, suffering from an advanced case of tuberculosis which had

produced a large cavity in his lung, was treated by the use of Alberty's Food, and that after 1 week's use of said Food there was such an improvement in the patient that the attending physician was amazed, that the improvement continued, and that the patient was now "back home esablished in business." She also represented that prior to the beginning of the treatment, a noted lung specialist had stated that the patient Smith's case was hopeless. As a matter of fact, the patient was not visited by a lung specialist, and the person referred to in respondent's statement as a lung specialist was, in fact, a doctor of osteopathy and a doctor of divinity. There was no such improvement as to "amaze" the attending physician, and said product, Alberty's Food, did not and could not have produced the therapeutic effects and benefits represented in respondent's booklet.

In the booklet "Cheno—Keep or Regain that Youthful Figure," written by said respondent and distributed by her in aid of the sale of her said products, respondent gives the case history of a patient who took Cheno Tablets for the purpose of reducing her weight. Said booklet contains a testimonial purported to have been written by the user of said preparation. In truth and in fact, the said testimonial was not written by the user of said preparation, nor were the results claimed to have been obtained by the said testimonial in truth and in fact so obtained. The use of the preparation Cheno did not and could not have produced the beneficial and therapeutic results and effects attributed to it by said testimonial and, in truth and in fact, the loss in weight brought about was produced by a strict diet, extending over a period of months, and strenuous exercise.

PAR. 8. 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 mistaken belief that the various preparations sold and distributed by the respondent have the therapeutic value represented by the respondent and that the use of said products will result in the benefits indicated to the user, and to induce such purchasing public to purchase said preparations in preference to other preparations designed and sold for the treatment of the various ailments for which respondent's respective products are recommended and offered for sale by manufacturers, retail dealers, and distributors. The result of the use of such false, deceptive, and misleading representations on the part of said respondent is to unfairly divert trade in commerce between and among the several States of the United States and in the District of Columbia to the respondent from dis-

tributors of other preparations for use in treating the various ailments for which respondent's respective products are recommended, 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, Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Chena Products, and U. S. Okey, 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 the Federal Trade Commission Act.

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 respondent, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint, and in opposition thereto, and the briefs filed herein, the respondent not having requested oral argument and the Commission having made its findings as to the facts and its conclusion that said respondent, Adah Alberty, 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 Adah Alberty, an individual, individually, and trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, or trading under any other name, her representatives, agents, and employees in connection with the offering for sale, sale, and distribution of various baby foods and health preparations, now sold by her under various and sundry names in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparations now designated as Alberty's Food Regular and Alberty's Food Instant (new style), or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, render milk more readily digestible, constitute a competent remedy, cure, or treatment for cancer or ulcer, or have any therapeutic or medicinal value.

2. Representing that the preparation Alberty's Food Instant (old style) or any other preparation composed of the same or similar ingredients and possessing similar properties, has any therapeutic value in excess of the therapeutic value possessed by ordinary milk.

3. Representing that the preparation now designated as Alberty's Laxative Blend, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, has any therapeutic value or affects the muscles of the intestines other than that the senna contained in the preparation is a cathartic.

4. Representing that the preparation now designated as Alberty's Special Formula Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, is a tonic and will produce blood regeneration or will increase sexual activity, or that it has any medicinal or therapeutic value.

5. Representing that the preparations now designated as Alberty's Phosphate Pellets and Alberty's No. 3 Tablets, or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, have any therapeutic value.

6. Representing that the preparation now designated as Cheno Combination Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, contains any ingredient which would have an influence on fat metabolism or that the use of said preparation will cause any weight reduction other than the reduction due to the laxative properties of said preparation, or that said preparation has a therapeutic value.

7. Representing that the preparation now designated as Cheno Herb Tea, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, contains any ingredient which will cause or produce any weight reduction, or that by the use thereof the user will bring about a reduction in weight, or that said preparation has any effect on the metabolism of fat, or that it has any therapeutic value other than that of a mild laxative.

8. Representing that the preparation now designated as Diabetic is a competent remedy, cure, or treatment for diabetes, or that it has any therapeutic or medicinal value.

9. Representing that the preparations now designated as Alberty's Phenix Pluri-Gland Tablets For Men and Alberty's Phenix Pluri-Gland Tablets For Women contain any ingredient which would in-

crease or stimulate sex activity, or that said preparations have any medicinal or therapeutic value,

10. Representing that the preparation now designated as Alberty's Food, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, rebuilds the intestinal tract and is the only food which accomplishes this result; that it eliminates rickets and other calcium-starvation diseases in children, adults, and animals; that it modifies milk so that the calcium element is assimilated; that by taking it more calcium and phosphorus are stored up in the body than would be by the use of three or four times the quantity of ordinary milk; that it is the only food discovered that offsets acidosis and is the most powerful alkaline food known.

11. Misrepresenting the cause of and the effect of an excess of magnesium in the human body.

12. Misrepresenting the character and properties of calcium, the effect on the system of a lack of calcium content; and the results and benefits accruing from the taking of calcium.

13. Representing that respondent was the first person in the United States to recognize the value of calcium; that calcium is a great rejuvenating agency; that the taking of Alberty's Food supplies the necessary calcium to the body in the proper quantities; and that stunted growth, tooth decay, acidosis, sickness, suffering, premature old age, and death are due either to a lack of calcium or the inability to assimilate it.

14. Representing that the spleen controls the sex organism and that acid fruits or vinegar, being "foreign acids," have a detrimental effect on the spleen, destroying red blood corpuscles.

15. Representing that acidosis is one of the contributing causes of waning sex life.

16. Representing that respondent's gland treatment will produce or bring about any beneficial results to the user.

17. Representing that bismuth subnitrate has a soothing effect on the digestive tract and is a valuable, harmless remedy.

18. Representing that the gall bladder should never be removed.

19. Representing by citing purported case histories of users thereof which said case histories are not true, and by the use of testimonials which are untrue in fact or which were not given by the person alleged to have given the testimonial that the various products sold by her have a value and efficacy which they do not possess.

20. Representing through the use of the word "laboratory," or any other term of similar meaning or like import, as a part of her trade name, or in any other manner or through any other means or device,

that she conducts, operates, or maintains a laboratory for the purpose of manufacturing, testing, or experimenting with the various preparations sold by her, until and unless she actually owns and operates, or directly and absolutely controls, a laboratory maintained for said purposes.

21. And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparations or the benefits accruing from the use thereof.

It is further ordered, That the respondent, Adah Alberty, an individual, shall, within 60 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 hereinbefore set forth.

IN THE MATTER OF

MORRIS L. RAUER, TRADING AS EARL CHROME 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 3426. Complaint, May 13, 1938—Decision, June 26, 1939

Where an individual engaged in sale and distribution of radios, clocks, cocktail shakers, coffee sets, and novelty merchandise, to purchasers in other States—

(*a*) Furnished with his said products, for use in sale thereof by his merchant customers, punchboards for sale and distribution in accordance with a plan by which person securing, out of 2,500 tubes on board, certain number as result of 5-cent chance purchased by him, became entitled to or won the radio, or other article being thus sold or disposed of by said individual to or through particular merchant, 8 other designated numbers entitled winners each to 50 cents in trade, and 30 other numbers entitled winners each to 25 cents in trade, and person punching last available punch in each of 25 sections into which board was divided received 50 cents in trade, and merchant was reimbursed for such trade furnished from his general stock, and said individual's agent called upon and collected for said individual from merchant about every 2 weeks from 50 to 60 percent of amount received by merchant for punches; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with those who do not use the same or similar methods of distribution;

With result that many persons, because of element of chance involved, were induced to buy and sell his said products in preference to merchandise offered and sold by competitors who, as aforesaid, do not use such or similar method of distribution, and from whom, as a result, trade was thereby diverted to said individual; and

(*b*) Represented, through inclusion of word "manufacturing" in trade name used by him, that he was the manufacturer of products which he sold, facts being he did not make such merchandise and neither owned, operated, nor controlled any plant in which such merchandise was made;

With result of causing purchasing public to believe that he was the manufacturer of the products sold by him and was a manufacturer for the purchase of the products of whom there is a preference on the part of a considerable portion of purchasing public as securing them thereby lower prices, superior quality, and other advantages, and with result that trade was diverted to said individual from his competitors who do not falsely represent that they are the manufacturers of the products which they sell:

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

Before *Mr. Charles F. Diggs*, trial examiner.
Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Morris L. Rauer, individually and trading as Earl Chrome Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of the 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 respondent, Morris L. Rauer, is an individual trading under the name of Earl Chrome Manufacturing Co., with his principal office and place of business located at 2757 Lincoln Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, clocks, cocktail shakers, coffee sets, and other articles of novelty merchandise, to purchasers thereof located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his principal place of business in Chicago, Ill., to purchasers thereof in the various States of the United States other than the State of Illinois and 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 by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 sells and has sold to dealers such assortments of said merchandise, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of his products to the purchasing public, and is as follows: This assortment consists of a radio and trade credits, together with a device commonly called a punchboard. The punchboard is divided

into 25 sections. Sales are 5 cents each, and each purchaser is entitled to 1 punch from said board. When a punch is made from said board a number is disclosed. The board bears statements informing prospective purchasers that a certain number entitles the purchaser thereof to a radio; that certain other numbers entitle the purchasers thereof to 25 cents in trade; that certain other numbers entitle the purchasers thereof to 50 cents in trade, and that the last punch in each section entitles the purchaser thereof to 50 cents in trade. The purchaser punching numbers calling for specified amounts "in trade" are entitled to and receive from the dealer operating said board articles of merchandise of values equal to said specified amounts "in trade." A purchaser who does not qualify by obtaining the number calling for a radio or 1 of the numbers calling for 25 cents or 50 cents in trade, or the last number in 1 of said sections, receives nothing for his money other than the privilege of punching a number from said 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 said radio and trade credits are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes various assortments of his merchandise and sells and furnishes various punchboards for distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The dealers to whom respondent sells or furnishes said punchboards use the same in 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 is contrary to an established public policy of the Government of the United States, and which is in violation of criminal laws.

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 the normal retail price thereof, or a specified amount "in trade," which said amount is greatly in excess of the sum to be paid therefor. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent as above alleged are unwill-

ing to adopt and use said method or any method involving the use of 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 competitiors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above alleged, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitiors of respondent who do not use the same or an equivalent method. The use of said method by the 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 his trade name the word "manufacturing." Respondent has used continuously, for some time last past, and is now using the word "manufacturing" in said trade name under which he carries on his business. Respondent has also used and is using the word "manufacturers" within the phrase "Manufacturers and Distributors," with which to describe his said business. In soliciting the sale of and selling his products in commerce as hereinabove alleged, respondent causes and has caused his said trade name and the phrase "Manufacturers and Distributors" to appear on his letterheads, invoices and other printed matter. All of said printed matter has been and is distributed in and among the various States of the United States and in the District of Columbia to customers and prospective customers of the respondent. The use of the word "manufacturing" in respondent's trade name and the word "manufacturers" within the phrase "Manufacturers and Distributors" serves as a representation that respondent owns, operates, or controls the factory or mill wherein the products which he sells are made or manufactured.

In truth and in fact respondent does not now, nor has he ever made or manufactured said products. Respondent does not own or operate any mill or factory wherein the products sold by him are made or manufactured. Respondent has at all times herein alleged 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 pro-

ducing 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 other advantages may be obtained by purchasing goods directly from a manufacturer or mill operator.

The use by respondent of the word "manufacturing" in his trade name and the word "manufacturers" within the phrase "Manufacturers and Distributors," as hereinabove alleged, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers by causing them to mistakenly and erroneously believe that the respondent actually owns and operates or controls the factories or mills in which said products are made or manufactured, and to purchase respondent's products on account of such mistaken and erroneous beliefs. The aforesaid representations by respondent have the 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 do not misrepresent their business status. In consequence thereof 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.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, on May 13 A. D. 1938, the Federal Trade Commission issued and served its complaint in this proceeding upon the respondent, Morris L. Rauer, individually and trading as "Earl Chrome Manufacturing 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, no answer being filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly appointed by it. John A. Nash

appeared as attorney for the respondent, but introduced no testimony or other evidence in opposition to the complaint. The testimony and other evidence introduced on behalf of the Commission were duly recorded and filed in the office of the Commission. Thereafter, the proceedings came on for final hearing on the said complaint, the testimony and other evidence, and brief in support of the complaint; no brief being filed in opposition thereto. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Morris L. Rauer, for 21 years has been engaged in the business of selling merchandise by means of punchboards. Respondent, from 1936 to 1937, conducted his business under the trade name "Earl Chrome Manufacturing Company," and since that time as "Earl Chrome Company." For the past 2 years respondent's principal place of business has been located at 2757 Lincoln Avenue, Chicago, Ill. Respondent sells and distributes radios, clocks, cocktail shakers, coffee sets, and novelty merchandise to purchasers thereof in States other than the State in which respondent's place of business is located and from which said shipments are made.

PAR. 2. Respondent, in the course and conduct of his said business was and is in competition with individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

PAR. 3. Respondent disposes of his merchandise in Wisconsin, Indiana, and Iowa, through his agents residing in said States, to whom he pays salaries, and, if they sell a certain amount of merchandise, they receive additional compensation in the form of commissions. These agents receive the merchandise from respondent together with punchboards, and they visit stores located in their territories and place same with the merchants. The respondent distributes 4 types of punchboards, which differ only in minor details; the punchboard used in disposing of radios is typical. This board is divided into 25 sections of 100 tubes each, or a total of 2,500 tubes, each constituting a punch. Each of these tubes contains a roll of paper bearing a number which is not disclosed until the tube has been punched. The merchant operating this board collects from his patrons 5 cents for each punch, and the person punching the tube bearing the number 100 wins a radio. Eight other designated numbers entitle the winners each to 50 cents in trade and 30 other numbers entitle the win-

ners each to 25 cents in trade. The person punching the last available punch in each section also receives 50 cents in trade. Patrons punching other than such winning numbers receive nothing. The merchandise other than the radio is furnished by the merchant from his general stock, but he is reimbursed therefor by the respondent.

After respondent's agent has placed the merchandise and punchboard with the merchant, he calls upon the merchant about every 2 weeks and collects from 50 to 60 percent of the amount received by the merchant for punches and at certain intervals delivers the amount so collected to the respondent at his place of business in Chicago.

In approximately 300 instances, merchants located in the several States hereinbefore mentioned have placed orders directly with the respondent at his place of business in Chicago, and he has shipped his merchandise and punchboards directly to them in such cases, and the same method of disposing of the merchandise was used as hereinbefore set forth and the proportion of receipts due the respondent from such sales of punches was collected by respondent's agents in the same manner as when the merchandise was originally placed by them.

There are others engaged in selling in interstate commerce merchandise similar to that sold by respondent who do not use punchboards in connection with the sale of their merchandise because such method is contrary to public policy.

PAR. 4. Many persons, because of the element of chance involved, have been induced to buy and sell the respondent's merchandise in preference to the merchandise offered for sale by respondent's competitors who do not use the same or similar methods of distribution, and as a result, trade has been diverted from such competitors to the respondent.

PAR. 5. Respondent, by the sales methods hereinbefore described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his merchandise is contrary to the established public policy of the Government of the United States and in violation of the criminal law.

PAR. 6. Respondent, by use of the trade name "Earl Chrome Manufacturing Company," represents himself to be the manufacturer of the products which he sells, when in fact he does not manufacture said merchandise and neither owns, operates, or controls any factory or plant in which said merchandise is manufactured. Said representations of respondent cause the purchasing public to believe that he manufactures the products sold by him. A considerable portion of the purchasing public prefer to buy from the manufacturer, in the

belief that they thereby secure lower prices, superior quality, and other advantages, and, as a result, trade is diverted to the respondent from his competitors who do not falsely represent that they are the manufacturers of the products which they sell.

CONCLUSION

The practices of the respondent as set forth in the foregoing findings as to the facts are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation 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, 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, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Morris L. Rauer, individually, and trading as Earl Chrome Manufacturing Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, clocks, cocktail shakers, coffee sets, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of such 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 others any merchandise together with punchboards, push or pull cards, or any other lottery device, or separately, for the purpose of enabling said persons to sell or distribute said merchandise by the use of said punchboards, push or pull cards, or any other lottery device.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Representing that respondent is the manufacturer of the merchandise which he sells and distributes unless and until he owns and operates or directly and absolutely controls the plant or factory wherein said merchandise is manufactured by him.

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

KING 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 3437. Complaint, May 21, 1938—Decision, June 26, 1939

Where a corporation engaged in manufacture, sale, and distribution of candy to dealer purchasers in various States—

Furnished or sold, with certain assortments of candy, various push cards and punchboards for use in display, sale, and distribution thereof under a plan in accordance with which purchaser selecting by chance, for 10 cents paid, feminine name corresponding to that concealed under card's master seal, received a package of candy; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of its products, in accordance with aforesaid or similar sales plan, by retail dealer purchasers of its candies, who exposed and sold same to purchasing public in accordance therewith, contrary to an established policy of the United States Government, and in competition with many who are unwilling to offer or sell their products so packed and assembled as above described for sale by any method involving game of chance or lottery, and refrain therefrom;

With effect of inducing purchasers of candy to buy its said product in preference to that offered and sold by competitors, and of excluding from candy trade all competitors who do not adopt and use such or similar method involving elements of chance or lottery, and 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 such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use similar methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its competitors who do not use similar methods, exclude from trade in question all competitors who are unwilling to and do not use such methods as against public policy, lessen competition in said trade, and create monopoly in it and in such other distributors of candy as use same or similar methods, and deprive purchasing public of benefit of free competition:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Hugo Swan, of Dallas, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that King Candy Co., a

corporation, hereinafter referred to as respondent, has violated the provisions of the 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, King Candy Co., is a corporation organized and doing business under the laws of the State of Texas, with its offices and principal place of business located at 813 East Ninth Street, Fort Worth, Tex. 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 dealers. Respondent causes, and has caused, its products, when sold to be transported from its principal place of business in the city of Fort Worth, Tex., to purchasers thereof located in the State of Texas 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 respondent 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 its business, respondent is in competition with other corporations and with individuals and partnerships likewise 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 its business as described in paragraph 1 hereof, respondent sells and has sold to 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 consists of a package of candy and a device commonly called a push card. Said package of candy is displayed to the purchasing public and is awarded to a purchaser by means of said push card in the following manner: The push card contains a number of partially perforated disks, a printed feminine name adjacent to each disk, and a blank space opposite each feminine name for writing in the name of the customer. The push card has a master seal concealed within which is one of the feminine names appearing adjacent to the disks on said card. Sales are 10 cents each and upon perforation of a disk and selection of one of the printed feminine names, the customer writes his name in the blank opposite such feminine name. When the last feminine name has been selected and the last disk perforated, the master seal is removed and the feminine name concealed thereunder is disclosed. The purchaser who selected the feminine name corresponding to the feminine name disclosed under the master seal is awarded the package of candy. The remaining

purchasers receive nothing for their money. The name printed under the master seal is effectively concealed from purchasers and prospective purchasers until all purchases have been made, all feminine names selected and the last disk separated from the card. The said package of candy is thus distributed to the purchasers of pushes from said card wholly by lot or chance.

Respondent furnishes or sells various push cards and punchboards for use in the sale and distribution of candy by means of a game of chance, gift enterprise, or lottery scheme. The unit sale on some of such punchboards is 5 cents. Said punchboards involve the same lot or chance feature, but vary in size, running 300, 400, 600, 1,000, 1,200, and 1,500 punches per board.

PAR. 3. Retail dealers who purchase respondent's candy 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 the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy to purchase respondent's candy 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 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 is contrary to an established policy of the Government of the United States and in violation of the criminal laws. 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 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 elements of chance or lottery. 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 to sell their products so packed and assembled as above alleged or by any other method involving a game of chance or lottery, 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 a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its 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 method because the same are against public policy and unlawful, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by 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 the same method or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 21, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, King Candy Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, to wit on November 10, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, acting for D. C. Daniel, attorney for the Federal Trade Commission before A. F. Thomas, an examiner of this Commission duly appointed for that purpose, and in opposition to the allegations of said complaint by Hugo Swan, attorney 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, testimony and other evidence, and brief of the attorney for the Commission, 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, King Candy Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Texas with its offices and principal place of business located in Fort Worth, Tex. Respondent is now, and for a long time past has been, engaged in the manufacture, sale, and distribution of candies to dealers. Respondent causes said candies, when sold to be transported from its principal place of business in Fort Worth, Tex., to purchasers thereof, some located in the State of Texas and others located in the various States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade and commerce by said respondent in such candy between and among 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 other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution of candy in commerce between and among various States of the United States and in the District of Columbia. Respondent does a business of approximately $500,000 per annum, 20 percent of which is done in interstate commerce, and approximately 10 percent of this business involves the use of the push card or punchboard as herein described.

PAR. 2. In the course and conduct of its business, as above described, respondent sells and has sold to dealers certain assortments of candy for distribution to consumers by use of the following plans: One of said assortments consists of a package of candy and a device commonly called a push card. Said package of candy is displayed to the purchasing public and is awarded to a purchaser by means of said push card as follows: The push card contains a number of partially perforated disks, a printed feminine name adjacent to each disk, and a blank space opposite each feminine name in which is written the name of the purchaser. The push card has a master seal concealed within which is one of the feminine names appearing adjacent to the disks on said card. Sales are 10 cents each and upon perforation of a disk and selection of one of the printed feminine names, the purchaser writes his name in the blank space opposite such feminine name. When the last feminine name has been selected and the last disk perforated, the master seal is removed, and the feminine name concealed thereunder is disclosed. The purchaser who selects the feminine name corresponding to the feminine name disclosed under the master seal is awarded the package of candy. The

name printed under the master seal is effectively concealed from purchasers and prospective purchasers until all purchases have been made, all feminine names selected and the last disk separated from the card.

PAR. 3. Respondent also furnishes or sells various push cards and punchboards for use in the sale and distribution of candy by means of a lottery scheme. The unit of sale on some of said punchboards is 5 cents. Said punchboards involve the same lottery feature, but vary in size running 300, 400, 600, 1,000, 1,200, and 1,500 punches per board.

PAR. 4. Retail dealers who purchase respondent's candies expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent supplies to and places in the hands of others, means of conducting a lottery in the sale of its products in accordance with the sales plans hereinabove set forth. Said sales plan has a tendency and capacity to and does induce purchasers of candy to purchase respondent's candy in preference to candy offered for sale and sold by its competitors.

PAR. 5. The use by respondent of said methods in the sale of candy is a practice of a sort which is contrary to an established policy of the United States Government, and the use of said methods has a tendency and capacity to and does exclude from the candy trade, competitors of respondent who do not adopt and use the same method or similar methods involving elements of chance or lottery. Many persons, firms, and corporations who manufacture and sell candy in competition with the respondent are unwilling to offer for sale or to sell their products so packed and assembled as hereinabove described to be sold by any method involving a game of chance or lottery, and such competitors refrain therefrom.

PAR. 6. Many dealers in and ultimate purchasers of candy are attracted by respondent's 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 similar methods. The use of said methods by respondent has a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its competitors who do not use similar methods, to exclude from the candy trade all competitors who are unwilling to and who do not use similar methods because the same are against public policy, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in

such other distributors of candy as use the same or similar methods; and to deprive the purchasing public of the benefit of free competition.

CONCLUSION

The aforesaid acts and practices of the respondent, King Candy Co., as herein found, 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 (respondent having filed no answer) testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent King Candy Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of such candy 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 others assortments of candy or other merchandise together with push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing such candy or other merchandise to the general public.

3. Supplying to or placing in the hands of others push or pull cards, punchboards, or any other lottery devices, either with assortments of candy or other merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing such candy or other merchandise to the general public.

4. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

BOBS CANDY AND PECAN COMPANY

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

Docket 3580. Complaint, Sept. 12, 1938—Decision, June 26, 1939

Where a corporation engaged in manufacture and sale of candy including certain assortments of candy and nut confections which were so packed and assembled as to involve a lottery scheme when sold and distributed to the consumer thereof and which included assortments composed of (1) number of individually wrapped bars of candy of uniform size and shape and sale and distribution thereof to purchasing public in accordance with concealed legend set forth on cardboard strips included with said individually wrapped pieces by which purchaser or customer securing with bar cardboard bearing letter "O" received such bar without charge and those securing bars with cardboards containing, as case might be numbers 1, 2, or 3 paid 1, 2, or 3 cents for bar thus secured; and, (2) number of 1 pound bars or rolls of nut confections of uniform size and shape, together with push card, for sale under a plan and in accordance with said cards' explanatory legend pursuant to which customer or purchaser received, for 5 cents paid, one of said pecan rolls in accordance with success or failure in selecting one of two numbers, or feminine name from list displayed corresponding to name displayed under card's master seal, and, failing any such selection received nothing other than privilege of pushing or separating disk from card—

Sold to dealers for display and resale by retailer dealer purchasers in accordance with aforesaid sales plans, such assortments and thereby supplied to and placed in the hands of others means of conducting lottery in the sale of its said products in accordance with aforesaid sales plan involving game of chance or sale of a chance to procure a bar or roll of candy or nut confection without charge, or at a price greatly below normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer or sell their products 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 and refrain therefrom;

With tendency and capacity to induce purchasers of candy and nut confections to buy its said products in preference to those offered and sold by its competitors, and with result that many dealers in and other purchasers of such products were attracted by its said method of packing same and by element of chance involved in sale thereof as above described, were thereby induced to purchase substantial amounts of such candy and confections so packed and sold by it in preference to those offered and sold by competitors who do not use such or equivalent methods, and with capacity and tendency because of said game of chance to divert to it trade and customers from its competitiors who do not use such or equivalent methods, to exclude from candy and nut confection trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, to lessen competi-

tion in said trade, and to create monopoly thereof in it and in such other distributors of such products as used such or equivalent methods, and to deprive purchasing public of benefit of free competition in said trades and to eliminate therefrom 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 all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. William B. Lott*, trial examiner.

Mr. D. C. Daniel for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Bobs Candy & Pecan Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, Bobs Candy & Pecan Co., is a corporation organized and doing business under the laws of the State of Georgia with its principal office and place of business located on Main Street, in Albany, Ga. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers. Respondent causes and has caused its products when sold to be transported from its principal place of business aforesaid to purchasers thereof located in the 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 by respondent in said candy and nut confections in 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, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and nut confections 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 sells and has sold to dealers certain assortments of candy and nut confections so packed and assembled as to involve a lottery scheme when so sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment consists of a number of bars of candy of uniform size and shape together with a corresponding number of strips of cardboard. Each of said bars of candy together with one of said strips of cardboard is contained within an individual cellophane wrapper. The said strips of cardboard bear legends stating that either the letter "O" or number 1, 2, or 3 is printed on the reverse side of each of said strips and that persons selecting bars of said candy with strips of cardboard on which are printed the letter "O" will receive bars of said candy without charge; persons selecting bars of said candy with strips of cardboard on which are printed the number 1 pay 1 cent each for bars of said candy; persons selecting bars of said candy with strips of cardboard on which are printed the number 2 pay 2 cents each for bars of said candy; and persons selecting bars of said candy with strips of cardboard on which are printed the number 3 pay 3 cents each for bars of said candy. The fact as to whether a bar of said candy is to be given without charge or the price to be paid for same is effectively concealed from purchasers and prospective purchasers until a bar of said candy has been selected and the wrapper removed therefrom and the printing on the reverse side of the accompanying strip of cardboard revealed. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public as follows:

This assortment consists of a number of one pound bars or rolls of nut confections of uniform size and shape together with what is commonly known as a push card. Sales are 5 cents each. The card contains a number of partially perforated discs on the face of which is printed the word "push," and immediately beneath each of said discs is printed a feminine name. Within each of said discs is printed a number. The card also contains a master seal with a feminine name concealed therein. Said names are alphabetically arranged elsewhere on said card and opposite each of said names is a ruled space for recording the name of the purchaser opposite the feminine name selected. The card bears legends or statements informing purchasers or prospective purchasers that persons receiving the numbers 10 and 20 will each receive a pecan roll and that the persons selecting the name corresponding with the name under the master seal will also receive a pecan roll. Persons who do not qualify by selecting either the number 10 or the number 20 or the name corresponding to the name under the master seal receive nothing for their money other than the privilege of pushing or separating a disc from said card. The numbers within said discs are effectively

concealed from purchasers and prospective purchasers until a selection has been made and a disc pushed or removed from said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all of the said discs have been pushed or removed from said card. The said rolls are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's candy and nut confections 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 the means of conducting a lottery in the sale of its product in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy and nut confections to purchase respondent's candy and nut confections in preference to candy and nut confections offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and nut confections to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a bar or roll of candy or nut confection without charge or at a price greatly below the normal retail price thereof. The use by respondent of said methods in the sale of candy and nut confections and the sale of candy and nut confections by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and which is in violation of the criminal laws. The use by respondent of said methods 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 and nut confections trade competitors who do not adopt and use the same method or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, or corporations who make and sell candy and nut confections in competition with respondent 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 purchasers of candy and nut confections are attracted by respondent's said methods of packing said candy and nut confections 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 nut confections so packed and sold by respondent in preference to candy and nut confections

offered for sale and sold by competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a capacity and tendency because of said game of chance to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods to exclude from the candy and nut confections trades 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 and nut confections trades, to create a monopoly of said candy and nut confections trades in respondent and in such other distributors of candy and nut confections as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition in said candy and nut confections trades. The use of said methods by respondent has the capacity and tendency to eliminate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same methods or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 12, 1938, issued, and on September 14, 1938, served, its complaint in this proceeding upon respondent, Bobs Candy & Pecan Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, 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 fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, 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, Bobs Candy & Pecan Co., is a corporation, organized and doing business under the laws of the State of Georgia with its principal office and place of business located in Albany, Ga. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers. Respondent causes and has caused its products when sold to be transported from its principal place of business aforesaid to purchasers thereof located in the 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 by respondent in said candy and nut confections in 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, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and nut confections 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 sells and has sold to dealers certain assortments of candy and nut confections so packed and assembled as to involve a lottery scheme when so sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment consists of a number of bars of candy of uniform size and shape together with a corresponding number of strips of cardboard. Each of said bars of candy together with one of said strips of cardboard is contained within an individual cellophane wrapper. The said strips of cardboard bear legends stating that either the letter "O" or number 1, 2, or 3 is printed on the reverse side of each of said strips and that persons selecting bars of said candy with strips of cardboard on which are printed the letter "O" will receive bars of said candy without charge; persons selecting bars of said candy with strips of cardboard on which are printed the number 1 pay 1 cent each for bars of said candy; persons selecting bars of said candy with strips of cardboard on which are printed the number 2 pay 2 cents each for bars of said candy; and persons selecting bars of said candy with strips of cardboard on which are printed the number 3 pay 3 cents each for bars of said candy. The fact as to whether a bar of said candy is to be given without charge or the price to be paid for same is effectively concealed from purchasers

and prospective purchasers until a bar of said candy has been selected and the wrapper removed therefrom and the printing on the reverse side of the accompanying strip of cardboard revealed. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public as follows:

This assortment consists of a number of 1 pound bars or rolls of nut confections of uniform size and shape together with what is commonly known as a push card. Sales are 5 cents each. The card contains a number of partially perforated disks on the face of which is printed the word "push," and immediately beneath each of said disks is printed a feminine name. Within each of said disks is printed a number. The card also contains a master seal with a feminine name concealed therein. Said names are alphabetically arranged elsewhere on said card and opposite each of said names is a ruled space for recording the name of the purchaser opposite the feminine name selected. The card bears legends or statements informing purchasers or prospective purchasers that persons receiving the numbers 10 and 20 will each receive a pecan roll and that the persons selecting the name corresponding with the name under the master seal will also receive a pecan roll. Persons who do not qualify by selecting either the number 10 or the number 20 or the name corresponding to the name under the master seal receive nothing for their money other than the privilege of pushing or separating a disk from said card. The numbers within said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and a disk pushed or removed from said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all of the said disks have been pushed or removed from said card. The said rolls are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's candy and nut confections 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 the means of conducting a lottery in the sale of its product in accordance with the sales plan hereinabove described. Said sales plan has a tendency and capacity to induce purchasers of candy and nut confections to purchase respondent's candy and nut confections in preference to candy and nut confections offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and nut confections to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a bar or roll of candy or nut confection without charge or at a price greatly below the normal retail price thereof. The use by respondent of said methods in the sale of candy and nut confections and the sale of candy and nut confections by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the government of the United States and which is in violation of the criminal laws. The use by respondent of said methods 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 and nut confections trades competitors who do not adopt and use the same method or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, or corporations who make and sell candy and nut confections in competition with respondent as above described are unwilling to offer for sale or to sell their product 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 nut confections are attracted by respondent's said methods of packing said candy and nut confections and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase substantial amounts of said candy and nut confections so packed and sold by respondent in preference to candy and nut confections offered for sale and sold by competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods, to exclude from the candy and nut confections trades 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 and nut confections trades, to create a monopoly of said candy and nut confections trades in respondent and in such other distributors of candy and nut confections as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition in said candy and nut confections trades. The use of said methods by respondent has the capacity and tendency to elimi-

nate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same methods or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent as herein found 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 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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Bobs Candy & Pecan Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy and nut confections or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, nut confections or any other merchandise so packed and assembled that sales of such candy, nut confections or such merchandise, 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 others, packages or assortments of candy, nut confections or other merchandise together with a push or pull card, punchboard, or other lottery device, which push or pull card, punchboard or other lottery device is to be used or may be used in selling and distributing such candy, nut confections or other merchandise to the public.

3. Supplying to or placing in the hands of others any lottery device either with assortments of candy, nut confections or other merchandise, or separately, which lottery device is to be used, or may be used in selling or distributing such candy, nut confections or other merchandise to the general public.

4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

FEE & STEMWEDEL, INC.

MODIFYING CEASE AND DESIST ORDER

Docket 3202. Order, July 6, 1939

Order modifying, on motion of counsel for respondent, cease and desist order against said respondent in Docket 3202, on May 2, 1939, 28 F. T. C. 1536, prohibiting certain misrepresentations in connection with manufacture, assembling, sale, and distribution of certain barometer models and combination models of thermometer, hygrometer, and barometer, as hereinbelow set forth.

Before *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Wham & O'Brien, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission upon the motion of Frank T. O'Brien, attorney for the respondent, to modify the order to cease and desist issued in this proceeding on May 2, 1939, and the Commission having considered said motion and the record and being now fully advised in the premises:

It is ordered, That the order to cease and desist issued herein on May 2, 1939, be modified so as to read as follows:

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 Arthur F. Thomas 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, briefs filed herein, and oral arguments by Joseph C. Fehr, counsel for the Commission, and by Frank T. O'Brien, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Fee & Stemwedel, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of barometers having movements or mechanisms of foreign origin, or manufacture whether sold as single instruments or as part of combination instruments, in commerce, as "commerce"

is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by use of the term "Made in U. S. A.," or any other term indicative of American manufacture, that such barometers are wholly of American manufacture.

2. Causing the brands or marks on imported barometer movements or other parts, or on other similar products, which indicate the foreign origin or manufacture thereof to be removed, erased, or concealed so as to mislead or deceive ultimate purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said products.

3. Representing, by the use of the term "Made by," or any other term of similar import or meaning, or in any other manner, that it is the manufacturer of said barometers, or is other than the assembler thereof, until and unless it actually manufactures such barometers and the movements or mechanisms 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

JAMES I. SILVER, TRADING AS SILVER MANUFACTURING COMPANY, SILVER SALES COMPANY, AND WORLD-WIDE RADIO COMPANY

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

Docket 3211. Complaint, Aug. 24, 1937—Decision, July 7, 1939

Where an individual engaged in offer, sale, and distribution of various articles of merchandise and novelties, including, among others, clocks, radios, silverware sets, and other products, to purchasers in various States and in the District of Columbia—

(*a*) Represented, through use of trade name including word "Manufacturing," under which he carried on portion of his business, and otherwise to customers and prospective customers, that he was manufacturer of the merchandise offered, notwithstanding fact he neither owned, controlled nor operated a factory, but purchased products dealt in from others, and was not, as represented, a manufacturer, for purchase of products of which direct there is preference on part of substantial portion of purchasing public and wholesale and retail dealers as affording, in their opinion, lower prices, merchandise of superior quality and other advantages not obtainable in purchasing from selling agency or middleman;

With effect of misleading and deceiving many of his customers and causing them to purchase merchandise offered by said individual in the erroneous belief that he owned, controlled, or operated a factory in which such merchandise was made, and with result of diverting trade to him from competitors who sell like or similar merchandise;

(*b*) Represented, in advertisements to secure agents or representatives in newspapers and periodicals of general circulation, that agents or representatives could give away, free of charge, R. C. A. licensed radios and make $13.92 on each deal, and that by obtaining such products from him they could secure same at factory prices and save up to 50 percent, notwithstanding fact he was not, as aforesaid, manufacturer of radios offered, did not sell same at factory prices, was only a middleman or dealer, purchasers did not save any such amount as above set forth, and he required his agents or representatives in all instances to sell to members of public chances on pull cards, push cards, or punchboards, or to render other services in payment for same, or to pay cash therefor;

(*c*) Represented, in advertisements, as aforesaid, that radios offered for sale by him were R. C. A. radios or those made by the Radio Corporation of America, through featuring letters "R. C. A." as descriptive thereof in large type, followed by word "license" or "licensed," or abbreviation thereof, in much smaller type, notwithstanding fact products in question, with tubes or other parts made by manufacturer operating under limited license from the Radio Corporation of America, had not been made by said company, products of which display prominently said letters, and for which there is a preference on the part of substantial portion of purchasing public and

wholesale and retail dealers, and which, in advertising such products, makes use of said letters as descriptive thereof;

With effect of misleading and deceiving many customers and inducing them to purchase radios offered by said individual in erroneous belief that they had been made and sold by said company, and with effect of diverting trade to him from many competitors who did not falsely represent that their radios were manufactured by corporation aforesaid; and

(*d*) Mailed and supplied to those replying to his advertisements for agents or representatives, circular letter and circulars descriptive of articles which he was offering, and push cards for use in sale and distribution of his said products, under a plan in accordance with which selection, or failure to select, from number of girls' names displayed on card, that name corresponding to name concealed under card's seal, determined whether or not person taking chance on card secured article being thus disposed of, and amount, if any, paid for chance was dependent upon number pushed by chance, and supplied thereby to and placed in the hands of others means whereby such persons might conduct lotteries in the sale and distribution of his said articles through plans involving games of chance or sales of chances to procure articles of merchandise, contrary to the public policy long established in the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with others engaged in sale and distribution of articles of same general nature and in same trade territory, and who do not sell the same through the use of games of chance, gift enterprises, or lottery schemes;

With the result that many purchasers of articles of merchandise from him were attracted by element of chance involved in his sales plan and thereby induced to purchase such articles in preference to like or similar merchandise offered by competitors who did not and do not use same or similar sales plan, and with further result that members of public, by reason of such preference, purchased substantial volume of merchandise from him and trade was unfairly diverted to him from competitors:

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. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* 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 James I. Silver, individually and trading as Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio 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 under the trade names and styles of Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio Co., and has his principal office and place of business located at 2868 Elston Avenue, Chicago, Ill. Respondent also has a mail address at 612 North Michigan Avenue, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of radio receiving sets, silverware sets, clocks, fountain pens, fountain pen and pencil sets, bedspreads, blankets, electric irons, wrist watches, luggage, bathroom scales, baseball gloves, dishes, beverage sets, lamps, card tables, electric fans, smoking sets, cameras, 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 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 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, 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 thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of pull cards, punchboards, and push cards. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper pull cards, punchboards, and push cards, order blanks, advertisements, and catalogs 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 consuming public and to the operators of the said pull cards, punchboards, or push cards. Said pull cards bear a number of feminine names arranged alphabetically, with a blank space opposite each for writing in the name of the customer. Said pull cards have a corresponding number of partially perforated "pulls," on each of which is printed 1 of the feminine names printed alphabetically elsewhere on the card. Concealed under each pull is a number, which is disclosed when the pull is separated from the card. The pull cards have a master seal, concealed within which is 1 of the feminine names appearing elsewhere on the said cards. Purchasers and prospective purchasers select 1 of the names and remove the pull, disclosing the number thereunder. Persons selecting numbers from 1 to 39 pay in cents the amount of such number, and persons selecting numbers over 39 pay 39 cents for the privilege of selecting 1 of the names. Persons selecting certain specified numbers receive the same free of charge. 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 a specified article of merchandise or the choice of certain specified articles of merchandise without further charge. The person, salesman, agent, representative, or retail dealer soliciting purchases of chances, as above described, also receives a specified article of merchandise or the choice of certain specified articles of merchandise or a cash commission or profit 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 1 of the names, or whether the same will be free of charge, until the selection has been made and the name removed. 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, if anything, until after the master seal has been removed. 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 pull cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said pull card is being operated and by which the merchandise described thereon is being distributed.

The 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 pull from said pull cards. The purchasing public are thus induced and persuaded into purchasing pulls

from said cards in the hope that they may select a prize-winning name 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 customers pay for a chance, or whether the same is free of charge, is also determined wholly by lot or chance.

As stated above, respondent sells and distributes various assortments of merchandise, and furnishes or sells various devices for use in the sale and distribution of such merchandise by means of a game of chance, gift, enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. Respondent, in selling said merchandise in connection with the sale or distribution of the aforesaid pull cards, punchboards, or 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, and respondent's merchandise is sold or distributed to the consuming public in accordance therewith. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or 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.

PAR. 4. Many persons, firms, and corporations who sell or distribute 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 his said competitors who do not use the same or an equivalent method.

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 to his customers and prospective customers, by the use of the trade name and style of Silver Manufacturing Co. and by other means, that he is the manufacturer of the merchandise which he sells and distributes. A substantial portion of the purchasing public, including also wholesale dealers, jobbers, and retail dealers, have expressed and have a preference for dealing direct with the manufacturer of the 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 he is a manufacturer of the merchandise which he sells and distributes, 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 operates or owns 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 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. 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 his said competitors.

PAR. 6. In the course and conduct of his 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:

Give away free R. C. A. lic. radios. Buy at factory prices.

CARDMEN: Give away radios free. The sweetest deal you ever saw. Send 10¢ for sample pushcard, and plan. Give radio illustrated away free and make $13.92 on every deal.

R. C. A. lic. radios. Factory prices. Save up to 50%.

Respondent inserted and caused to be published these advertisements in newspapers, magazines, and other periodicals of general cir-

culation, 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 radios are not given away, they are not free, salesmen and agents do not make money giving away radios free, respondent is not a manufacturer and does not sell at factory prices, and persons purchasing radios from respondent do not save 50 percent. Respondent requires persons receiving radios to sell chances on pull cards, punchboards, or push cards, or to render other service, or to pay cash for said radios. It is necessary for somebody to buy or sell something before the radios are delivered. Respondent, in the sale and distribution of radios and other merchandise, is a middleman or dealer and does not sell or distribute radios or other merchandise at factory prices or at a 50 percent saving.

PAR. 7. 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 means of advertisements inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, that certain of the radios sold and distributed by him are R. C. A. radios, thereby meaning radios manufactured and distributed by the Radio Corporation of America. These representations are made by the use of the letters R. C. A. in large type, and the words license or licensed, or lic. as an abbreviation for license or licensed, in much smaller type or print. A substantial portion of the purchasing public, including also wholesale and retail dealers, have expressed and have a preference for radio receiving sets manufactured or distributed by the Radio Corporation of America, and the Radio Corporation of America, in selling and distributing its radios, uses the letters R. C. A. prominently in its advertisements and on its radios. Said letters have, in the minds of the purchasing public, including also wholesale and retail dealers, come to mean radios manufactured and distributed by the Radio Corporation of America.

The use by respondent of the letters R. C. A. has the capacity and tendency to and does mislead and deceive many of respondent's customers into the erroneous belief that the said radios are manufactured, sold, and distributed by the Radio Corporation of America. The truth and fact is that said radios are not manufactured, sold or distributed by the Radio Corporation of America, but the tubes or certain other features of the said radio sets are manufactured by others under a limited license from the Radio Corporation of America. There are many competitors of respondent who do not falsely represent that the radios which they are selling and distributing are made and distrib-

uted by the Radio Corporation of America. The use of said representations by respondent has the tendency and capacity to and does unfairly divert trade to respondent from his said competitors.

PAR. 8. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said 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 the Federal Trade Commission Act the Federal Trade Commission on August 24, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent, James I. Silver, individually and trading as Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner for the Commission, theretofore duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter a stipulation was made and entered into by and between William T. Kelley, chief counsel for the Commission, and John A. Nash, counsel for the respondent, as to certain additional facts material to the issues herein, which stipulation was approved by 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, the stipulation as to certain of the facts, briefs in support of the complaint (respondent not having filed brief 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. Respondent, James I. Silver, is an individual and at various times prior to the issuance of the complaint herein and subsequent thereto, has carried on business under the names and styles of Silver Manufacturing Co., Silver Sales Co., World-Wide Radio Co., and World-Wide Distributing Co., with his principal place of business located at 2868 Elston Avenue in the city of Chicago, State of Illinois. Since the latter part of the year 1936 respondent has been engaged in the business of offering for sale, selling, and distributing various articles of merchandise and novelties including, among others, clocks, radios, silverware sets, fountain pens, fountain pen and pencil sets, bedspreads, blankets, and electric irons, to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent has caused said articles of merchandise, when sold, to be transported from his place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois and in the District of Columbia. Respondent has been, and is now, in substantial competition with various partnerships and corporations and other persons likewise engaged in the sale and distribution of similar articles of merchandise in commerce among 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, by use of the trade name, Silver Manufacturing Co., under which he carried on a portion of his business, and by other means, has caused the representation to be made to customers and prospective customers that he was the manufacturer of the merchandise which he was offering for sale, although respondent did not own, control, or operate a factory but purchased the merchandise in which he dealt from others. A substantial portion of the purchasing public, also wholesale and retail dealers, have a preference for dealing direct with manufacturers of articles which they desire to purchase and believe that by so doing they will be able to purchase at lower prices and will receive merchandise of superior quality and obtain other advantages not obtainable when purchases are made from a selling agency or middleman. The use by respondent of such representations has the capacity and tendency to mislead and deceive and has misled and deceived many of his customers and has caused them to purchase merchandise offered for sale by respondent in the erroneous belief that respondent owned, controlled, or operated a factory in which such merchandise had been

manufactured. Many competitors of respondent do not falsely represent that they manufacture merchandise sold by them, and the use of such representations by respondent has the capacity unfairly to divert and has diverted trade to respondent from such competitors who sell like or similar merchandise to that sold by respondent, in commerce between and among various States of the United States.

PAR. 3. Respondent further in the course and conduct of his business, for the purpose of obtaining agents or representatives through whom radios offered for sale by him might be distributed, has caused advertisements to be inserted in newspapers, magazines, and other periodicals having general circulation in various States of the United States, in which advertisements statements and representations were made to the effect that agents or representatives of respondent could give away, free of charge, R. C. A. licensed radios and make $13.92 on each deal; that by obtaining radios from respondent, agents and representatives of respondent could obtain such radios at factory prices and save up to 50 percent although respondent was not the manufacturer of the radios offered for sale by him and did not sell same at factory prices, but in the distribution of such radios, respondent was only a middleman or dealer and purchasers of such radios from respondent did not save up to 50 percent. That in all instances, respondent required his agents or representatives to sell to members of the public chances on pull cards, push cards, or punchboards, or to render other services in payment for said radios or to pay cash for same.

PAR. 4. Respondent, in the course of his business, in advertisements which he caused to be published, as set out in paragraph 3 hereof, has represented that the radios offered for sale by him were R. C. A. radios or radios manufactured by the Radio Corporation of America; that such representation was made by the use by respondent of the letters R. C. A. as descriptive of such radios, which letters appeared in large type followed by the word "license" or "licensed," or an abbreviation of one of these words printed in much smaller type. A substantial portion of the purchasing public, also wholesale and retail dealers, have expressed a preference and have a preference for radios manufactured by the Radio Corporation of America, which corporation in selling and distributing radios, makes use of the letters R. C. A., as descriptive of such radios, which letters are displayed prominently in its advertisements and upon the radios sold by it and as a result the purchasing public and dealers in radios have believed that radios so described had been manufactured and sold by the Radio Corporation of America, and the use by respondent of said letters as descriptive of the radios offered for sale by him has the capacity and tendency to

mislead and deceive and has misled and deceived many customers of respondent and has induced such customers to purchase the radios offered for sale by respondent in the erroneous belief that they had been manufactured and sold by the Radio Corporation of America, although such radios had not been manufactured by the Radio Corporation of America, but the tubes or other parts of the radios had been made by a manufacturer which was operating under a limited license from the Radio Corporation of America. Many competitors of respondent do not falsely represent that radios offered for sale by them were manufactured by the Radio Corporation of America and the use by respondent of such representation has the capacity and tendency unfairly to divert and has diverted trade to respondent from said competitors in commerce between and among various States of the United States.

PAR. 5. As a means of obtaining agents or representatives through whom he might sell radios and other articles of merchandise dealt in by him, respondent has caused advertisements to be published in numerous periodicals of general circulation in various States of the United States. When responses to such advertisements were received by respondent, he mailed to those making inquiries a circular letter and circulars descriptive of articles of merchandise which he was offering for sale. For a period of about 2 months in 1937, respondent mailed to a number of prospective customers devices described as "pull cards." These cards had printed thereon a number of girls' names and under each name was a concealed number. Near the upper right-hand corner of the card was a disk in the form of a seal which concealed a name which was the same as 1 of the names displayed on the cards; accompanying each of the cards were instructions as to the use to be made of the cards in the distribution of articles of merchandise. Members of the public were to be solicited to select one or more of the numbers on the card and to pay the number of cents indicated by the number concealed beneath each of the names selected, except that selectors of numbers higher than 39 paid only 39 cents and some of the numbers were designated as free and selectors of those numbers paid nothing. When all names had been selected and collections made, the seal was then opened and the name concealed thereby disclosed and the article of merchandise involved was then awarded to the person who had selected the name which was the same as that concealed by the seal. Other cards of the same general nature but which contained fewer names, and which provided that selectors of numbers higher than 29 paid only 29 cents, also were distributed by respondent. In the

use of these cards the selection of a name which might entitle the selector to the article of merchandise involved and the amount which each of the selectors was required to pay, was wholly a matter of chance.

PAR. 6. The Commission finds that the persons to whom respondent furnished the cards described in paragraph 5 hereof, used same in purchasing, selling, and distributing the articles of merchandise sold by respondent in accordance with the sales plan described in said paragraph 5, and that by so furnishing such cards respondent thereby supplied to and placed in the hands of others the means whereby such persons might conduct lotteries in the sale and distribution of such articles of merchandise; that sales of such articles of merchandise to the purchasing public by means of the sales plan described in said paragraph 5, involved games of chance or the sales of chances to procure articles of merchandise sold by respondent and that the use of such sales plan constituted a lottery and 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 policy of the Government of the United States.

PAR. 7. There are among the competitors of respondent persons, partnerships, and corporations engaged in the sale and distribution of articles of merchandise of the same general nature as those sold by respondent and in the same trade territory as that reached by respondent, in commerce among various States of the United States, which competitors do not sell such articles of merchandise by the use of games of chance, gift enterprises, or lottery schemes. Many purchasers of articles of merchandise from respondent were attracted by the element of chance involved in the sales plan of the respondent and were thereby induced to purchase the articles of merchandise from respondent in preference to like or similar articles of merchandise offered for sale by competitors of respondent, which competitors did not and do not use the same or a similar sales plan and because of this preference members of the public have purchased a substantial volume of merchandise from respondent with the result that trade has been unfairly diverted to respondent from his competitors.

CONCLUSION

The acts and practices of respondent as hereinbefore found 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 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, brief filed herein by counsel for the Commission (respondent having filed no brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, James I. Silver, individually and trading under the names of Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks, radios, silverware sets, fountain pens, fountain pen and pencil sets, bedspreads, blankets, electric irons, or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, 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 any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or to distributors or 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

4. Representing that respondent is a manufacturer of said products or sells said products at factory prices which eliminate the middleman, unless and until he owns and operates or directly and absolutely controls the factory or plant wherein said products are manufactured by him.

5. Representing, directly or by inference, through the use of the trade name "R. C. A.," or any colorable simulation thereof, or in any other manner, that radios manufactured by manufacturers other than Radio Corporation of America are "R. C. A." radios or are made by the Radio Corporation of America.

6. Representing that the purchasers of respondent's products obtain a saving of 50 percent, or any other amount, when such is not the fact.

7. Using the term "free" or any other term or terms of similar import or meaning to describe or refer to merchandise furnished by respondent to his agents or representatives for distribution to their customers when said agents or representatives are required to pay for such merchandise or to procure the sale of other articles of merchandise or to perform other services in connection with obtaining such merchandise.

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

SHAW & DAVIS, INC., AND ABNER SHAW AND JANET SHAW

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

Docket 3635. Complaint, Oct. 25, 1938—Decision, July 7, 1939

Where a corporation and two individuals, officers thereof and in control of its advertising policies and business activities, engaged in importing diamonds for resale, and in purchasing, from manufacturers or jobbers in this country, jewelry, silverware, diamonds, watches, clocks, leather goods, and kindred products, and in selling such various items or articles to consuming public by mail order; acting in cooperation and in concert with one another in the below set forth acts and things—

(*a*) Described themselves as "wholesalers" in their catalogs and thereby represented that they were wholesalers engaged in sale and distribution of merchandise to trade for resale, notwithstanding fact substantially all of their sales were made to members of buying and consuming public who do not purchase for resale purposes, and they were not wholesalers of jewelry, sellers to trade for resale, but seldom, if ever, to consumer or purchasing public, and were not "wholesalers," marked and distinguished by character of sales to trade, but constituted corporate mail-order house engaged in sale to consuming public; and

(*b*) Quoted, in connection with each of items listed in aforesaid catalogs, "list prices", so-called, and advised prospective customers and members of consuming public, through catalog insert, that such "list prices" for dealers of all items in such catalogs were "subject to discounts of 50% and 2% additional for cash" on the remaining 50 percent, making total discount on "list prices" of 51 percent, notwithstanding fact said prices were not list prices or retail prices in connection with sales to retail trade, as understood from trade term as used by manufacturers, jobbers, and wholesalers to designate such price, but figures which, reduced by discount aforesaid, would show prices of articles as offered to members of purchasing public, and their said prices were not wholesale prices thereof, but usual and customary prices charged by them in usual course of business;

With result of causing consuming public to buy their merchandise under belief that said corporation was wholesaler engaged in selling to retail dealer trade, and that consuming public was buying from it at retail dealer prices, and with capacity and tendency to mislead and deceive substantial portion of purchasing public into belief that products offered and sold by them were sold at wholesale prices and that such persons as purchased from them might buy at such prices and save retail dealer's profit, and to induce purchase of their said products by members of purchasing public through reliance upon such erroneous belief, and with effect of diverting trade unfairly to it from competitors engaged in distribution and sale in commerce of products aforesaid:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice and injury of the public and constituted

unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.
Mr. John M. Russell for the Commission.
Mr. Herman Goldman, of New York City, for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Shaw and Davis, Inc., a corporation, and Abner Shaw and Janet Shaw, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Shaw and Davis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and respondents Abner Shaw and Janet Shaw, individuals, are president and vice president, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and place of business is located at 20 West 47 Street, city of New York, State of New York.

Par. 2. Respondents now are and for more than two years last past have been engaged in the business of importing for resale diamonds and in purchasing for resale from manufacturers or jobbers located in this country jewelry, silverware, diamonds, watches, clocks, leather goods, and kindred items. Respondents are engaged in a mail order business by means of which they sell the products above mentioned direct to the consuming public. Respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said articles of merchandise 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 said business, respondents are in active and substantial competition with other corporations

and individuals and with firms and partnerships engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements as to the nature and character of their business and as to the value and prices of the articles sold by them respectively.

PAR. 4. In the course and conduct of their business as described in paragraph 2 hereof, the respondents in soliciting the sale of and selling their products as aforesaid have published or caused to be published and have distributed or caused to be distributed to purchasers or prospective purchasers of respondents' products located in various States of the United States and in the District of Columbia catalogs in which the products offered for sale and sold by the respondents are pictorially and descriptively represented. On the first pages of and at various places in said catalogs said respondents refer to themselves as "wholesalers." A wholesaler is one who sells to the trade but never to the ultimate consumer of an individual unit as such. It is the character of the sales to the trade that marks and distinguishes a wholesaler. In truth and in fact, the respondents are not wholesalers but said corporate respondent is a mail order house engaged in selling to the consuming public.

PAR. 5. In the course and conduct of said business as described in paragraph 2 hereof, the respondents, in connection with the offering for sale and sale of their products in said commerce under a trade status designated by them as "wholesalers," have quoted in connection with each of the items listed in their catalogs heretofore referred to certain figures termed by the respondents "list prices." An insert in said catalogs advises prospective customers, members of the consuming public, that the said "list prices" for dealers of all items in respondents' catalogs are "subject to discounts of 50 percent and 2 percent additional for cash" on the remaining 50 percent making a total discount from the "list prices" of 51 percent. The term "list prices" is a trade term used by manufacturers, jobbers or wholesalers in connection with sales to the retail trade. The term "list prices" as used by respondents and the discounts therefrom are used by them for the purpose of inducing the consuming public to buy their merchandise under the belief that the said corporate respondent is a wholesaler engaged in selling to the retail dealer trade and that the consuming public is buying from said corporate respondent at retail dealer prices.

In truth and in fact, the so-called "list prices" are not "list prices" but are figures that will, when reduced by the discount of 51 percent.

be the usual and customary prices charged by retail dealers to members of the consuming public.

PAR. 6. The aforesaid practices of the respondents have had and have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the belief that the products offered for sale and sold by them are sold at wholesale prices and that such persons as purchase such articles from the respondents may buy at the wholesale prices and save the retail dealer's profit, and to induce the purchase of the respondents' products by members of the purchasing public in reliance upon such erroneous belief.

The aforesaid practices of respondents have had and have, and each of them has had and has, the capacity and tendency unfairly to divert trade to the respondents from competitors who truthfully describe their status and the prices at which their products are regularly sold.

PAR. 7. The above named acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 25th day of October 1938, issued and served its complaint in this proceeding upon said respondents, Shaw and Davis, Inc., a corporation, and Abner Shaw and Janet Shaw, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 12, 1938, the respondents filed their answers in this proceeding. At the hearing on December 14, 1938, in New York City, a conditional stipulation was entered into by the attorney for the respondents and the trial attorney for the Federal Trade Commission, subject to the approval of the Commission, which was made a part of the record herein, whereby it was stipulated and agreed that a statement of facts set forth therein 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 a

supplemental stipulation was executed by respondents and their counsel Herman Goldman, whereby it was stipulated and agreed that the conditional nature of said prior stipulation should be eliminated. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers stipulations, said stipulations having been approved, accepted and filed, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Shaw and Davis, Inc. is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, and respondents Abner Shaw and Janet Shaw, individuals, are president and vice president, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all said respondents have cooperated each with the other, and have acted in concert, in doing the acts and things hereinafter alleged. Respondents' office and place of business is located at 20 West Forty-seventh Street, city of New York, State of New York.

PAR. 2. Respondents now are, and for more than 2 years last past have been, engaged in the business of importing for resale, diamonds, and in purchasing from manufacturers or jobbers located in this country, jewelry, silverware, diamonds, watches, clocks, leather goods and kindred items. Respondents are engaged in the mail order business by means of which they sell the products above-mentioned to the consuming public. Respondents cause said products when sold to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business the corporate respondent is in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of jewelry, silverware, diamonds, watches, clocks, leather goods, and kindred items, 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 as described in paragraph 2 hereof, the respondents in soliciting the sale of and selling their products as aforesaid have published or caused to be published, and have distributed or caused to be distributed to purchasers or prospective purchasers of respondents' products located in various States of the United States and in the District of Columbia, catalogs in which the products offered for sale and sold by respondents are pictorially and descriptively represented. In the first pages of, and at various places in, said catalogs, said respondents refer to themselves as "wholesalers." By this means the respondents represent that they are wholesalers engaged in the sale and distribution of merchandise to the trade for resale. In truth and in fact substantially all of the sales made by the respondents are made to members of the buying and consuming public who do not purchase for resale purposes. A wholesaler of jewelry is one who sells to the trade for resale but seldom if ever to the ultimate consumer or purchasing public. It is the character of the sales to the trade that marks and distinguishes a wholesaler. The respondents are not wholesalers, but said corporate respondent is a mail order house engaged in selling to the consuming public.

PAR. 4. In the course and conduct of said business as hereinabove described, the respondents, in connection with the offering for sale and sale of their products in said commerce, under a trade status designated by them as "wholesalers," have quoted in connection with each of the items listed in their catalogs heretofore referred to, certain figures termed by the respondents "list prices." An insert in said catalogs advises prospective customers and members of the consuming public that the said "list prices" for dealers of all items in the respondents' catalogs are "subject to discounts of 50% and 2% additional for cash" on the remaining 50 percent, making a total discount from the "list prices" of 51 percent. The term "list prices" is a trade term used by manufacturers, jobbers and wholesalers to designate retail price in connection with sales to the retail trade and are so understood by members of the purchasing, buying and consuming public. The term "list prices" as used by respondents, and the discounts therefrom, and used by them cause the consuming public to buy their merchandise under the belief that the said corporate respondent is a wholesaler engaged in selling to the retail dealer trade, and that the consuming public is buying from said corporate respondent at retail dealer prices.

In truth and in fact, so-called "list prices" are not "list prices" but are figures that will, when reduced by the discount of 51 percent, be figures which will show the prices of respondents' articles as offered for sale to members of the purchasing public. The said prices at which respondents' articles are sold to the purchasers thereof are not, and have not been, wholesale prices of such articles, but are the usual and customary prices charged by respondents in the usual course of business.

PAR. 5. The aforesaid practices of the respondents have had, and have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the belief that the products offered for sale and sold by them are sold at wholesale prices, and that such persons as purchase such articles from the respondents may buy at the wholesale prices and save the retail dealer's profit, and to induce the purchase of respondents' products by members of the purchasing public by reliance upon such erroneous belief, with the result that trade has been diverted unfairly to the corporate respondent from its competitors likewise engaged in the business of distributing and selling jewelry, silverware, diamonds, watches, clocks, leather goods, and kindred items, in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of respondents, under the conditions and circumstances described in the foregoing findings, are all to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, a stipulation as to the facts entered upon the record, and a supplemental stipulation executed by respondents and their counsel, which stipulations provide 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 proceedings, 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 respondents, Shaw and Davis, Inc., a corporation and its officers, and Abner Shaw and Janet Shaw, and their respective agents, representatives, and employees, directly or through any corporate or other devices, in connection with the offering for sale, sale and distribution of jewelry, silverware, diamonds, watches, clocks, leather goods, or any other merchandise to the purchasing public other than the retail trade in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Designating, describing or representing the corporate or individual respondents as "Wholesalers" or "Wholesale Jewelers" in catalogs, printed matter, or in any other manner.

2. Using the terms "list prices" or "discount," or representing that the price at which respondents offer for sale and sell their various products constitutes a discount to the purchaser or is a wholesale price, when in fact said price is the usual and customary price at which the respondents sell said products in the normal and usual course of business.

It is hereby further ordered, That the respondents shall, within 60 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

WYETH 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 3754. Complaint, Apr. 7, 1939—Decision, July 7, 1939

Where a corporation engaged in sale and distribution of "Freezone," preparation for removal of corns and callouses, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like and similar products or other products and treatments designed, intended and used for similar purposes, in commerce as aforesaid, and in said District—

(*a*) Represented, in its advertising in newspapers and periodicals of general circulation, and in bulletins and other advertising literature circulated to prospective purchasers in various States and in said District, that use of said "Freezone" would cure corns and callouses and prevent their formation and recurrence, and promptly stop the pain which they caused and prevent its recurrence;

Facts being that, while such preparation might have analgesic effect and mitigate pain caused by corns, use thereof would not promptly stop such pain and prevent recurrence, and its said statements and representations with respect to therapeutic value of its said product and effectiveness thereof were false, misleading and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of its said representations were true, and with result, as direct consequence of such erroneous and mistaken belief, that number of purchasing public bought substantial volume of its product, and trade in commerce was diverted unfairly to it from competitors likewise engaged in sale and distribution of like and similar products, or other products and treatments intended, designed and used for similar purposes, and who truthfully advertise their products and effectiveness thereof; to the substantial injury of competition in commerce among the States and in said District:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce; and

Where said corporation engaged in sale and distribution of its said "Freezone," for removal of corns and callouses, to purchasers in other States and in the District of Columbia, as aforesaid; in advertisements which it disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through other printed or written matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extrastate audience, and through other means, and which were intended and calculated to induce purchase of its said product—

(*b*) Represented, directly and by implication, that corns had roots, and that said preparation would remove such roots and deaden pain caused by corns and prevent their recurrence, and that entire corn could be removed by the fingers through one application, through such statements, among others,

as "There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * *," "* * * Put the corn to sleep, then in a few days you lift it right out with the fingers," and "* * * pain is scientifically deadened. * * *";

Facts being corns do not have roots, it is necessary to make repeated applications of such preparation to corn and to remove cornified layers gradually by peeling off tissue dissolved after each application of preparation, and entire corn cannot be removed, as above set forth, and, while said product may have an analgesic effect and mitigate pain caused by corns, it will not deaden such pain or prevent its recurrence, and said statement and representations relative to therapeutic value of such product and its effectiveness were deceptive, misleading and untrue, and constituted false advertisements;

With effect of misleading and deceiving members of purchasing public in various States into erroneous and mistaken belief that such statements and representations were true and into purchase of its said drug-containing product:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. George Foulkes for the Commission.

Mr. Simon Michelet, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Wyeth Chemical Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Wyeth Chemical Co., is a corporation organized, existing and doing business under the laws of the State of Deleware with its office and principal place of business located at 15 Exchange Place, Jersey City, N. J.

Par. 2. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation for the removal of corns and calluses, designated by respondent as "Freezone." Respondent causes said product when sold to be transported from its place of business in New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 respondent is in substantial competition with other corporations and with individuals, firms and partnerships engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its preparation, respondent has caused statements and representations relative to the therapeutic value of such preparation and its effectiveness in use to be inserted in newspapers and periodicals having a general circulation throughout the United States and in bulletins and other advertising literature circulated to prospective purchasers of such preparation situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated or caused to be disseminated by the respondent, as aforesaid, are the following:

If you want to keep your feet free from aching corns, just get a bottle of Freezone from any druggist.

Now lift off corns AND STOP PAIN INSTANTLY.

Pain stops like a flash and soon the corn gets so loose you can lift it right off with your fingers. You will agree that it is the quickest, easiest way to stop pain and get rid of hard and soft corns, even corns between the toes.

Hard corns, soft corns, corns between the toes, and callouses lift right off. * * *

Stops pain instantly. Corns lift off.

Hard corns or soft—all are quickly ended by FREEZONE. Callouses, too.

The aforesaid statements and representations by respondent and statements and representations of similar import and meaning not herein set out but disseminated as aforesaid purport to be descriptive of the therapeutic value of respondent's preparation and of its effectiveness in use. In the manner and by the means aforesaid, respondent represents directly and by implication that the use of such preparation will cure corns and callouses and prevent the formation and recurrence thereof, and will promptly stop the pain caused by corns and prevent the recurrence thereof.

PAR. 5. The aforesaid statements and representations by respondent with respect to the therapeutic value of such preparation and of its effectiveness in use are false, misleading and untrue. In truth and in fact, such preparation will not cure corns and callouses and will not prevent the formation and recurrence thereof. Such preparation may have an analgesic effect and mitigate the pain caused

by corns but the use of such preparation will not promptly stop the pain caused by corns and will not prevent the recurrence thereof.

PAR. 6. Each and all of the false and misleading representations made by the respondent in its advertising in newspapers and magazines, in offering for sale, and selling, its product, as hereinabove set out, had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the purchasing public has purchased a substantial volume of respondent's product with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing like and similar products or other products and treatments intended, designed and used for similar purposes and who truthfully advertise their products and the effectiveness thereof when used. As a result thereof, injury has been done, 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. 7. In the course and conduct of its said business and since March 21, 1938, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false and misleading representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Just a few drops at a time is all that is necessary. The corn is quickly put to sleep—pain is scientifically deadened. Soon the corn lifts right out. It's as easy as that—even with the most painful corns and callouses.

Just a few drops of this clear liquid are enough. * * * It puts the corn to sleep and soon you can lift the corn right out * * *.

There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * * This scientific remedy, a clear liquid, gets at the real trouble, the roots of the corn. Freezone soon lets you lift the corn out completely. Even more, Freezone rapidly puts the corn to sleep—deadens the pain. * * *

CORNS LIFT RIGHT OUT. Freezone does it. Put the corn to sleep, then in a few days you lift it right out with the fingers.

In the manner and by the means aforesaid, respondent represents directly and by implication that corns have roots and that such preparation will remove the roots of corns, will deaden pain caused by corns and prevent the recurrence thereof, and that the entire corn can be removed by use of the fingers by reason of one application of such preparation.

PAR. 8. The aforesaid statements and representations by the respondent relative to the therapeutic value of such preparation and of its effectiveness in use are deceptive, misleading and untrue and constitute false advertisements. In truth and in fact, corns do not have roots and consequently such preparation will not remove the roots of a corn. Such preparation may have an analgesic effect and mitigate the pain caused by corns but will not deaden such pain and prevent the recurrence thereof. The entire corn cannot be removed by use of the fingers by reason of one application of such preparation. In fact, it is necessary to make repeated applications of such preparation to the corn and to remove the cornified layers gradually by peeling off the tissue dissolved after each application of the preparation.

PAR. 9. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's aforesaid medicinal preparation containing drugs.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, in paragraphs 1 to 6, inclusive, 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.

The aforesaid acts and practices of respondent, as herein alleged, in paragraphs 1, 2, 7, 8, and 9, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 7, 1939, issued, and on April 10, 1939, served, its complaint in this proceeding upon the respondent, Wyeth Chemical Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 12, 1939, 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's counsel, Simon Michelet, 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, accepted and filed, 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, Wyeth Chemical Co., is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 15 Exchange Place, Jersey City, N. J.

Par. 2. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation for the removal of corns and callouses, designated by respondent as "Freezone." Respondent causes said product when sold to be trans-

ported from its place of business in New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 respondent is in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its preparation, respondent has caused statements and representations relative to the therapeutic value of such preparation and its effectiveness in use to be inserted in newspapers and periodicals having a general circulation throughout the United States and in bulletins and other advertising literature circulated to prospective purchasers of such preparation situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated or caused to be disseminated by the respondent, as aforesaid, are the following:

"If you want to keep your feet free from aching corns, just get a bottle of Freezone from any druggist.

Now lift off corns AND STOP PAIN INSTANTLY.

Pain stops like a flash and soon the corn gets so loose you can lift it right off with your fingers. You will agree that it is the quickest, easiest way to stop pain and get rid of hard and soft corns, even corns between the toes.

Hard corns, soft corns, corns between the toes, and callouses lift right off. * * *

Stops pain instantly. Corns lift off.

Hard corns or soft—all are quickly ended by FREEZONE. Callouses, too.

The aforesaid statements and representations by respondent and statements and representations of similar import and meaning not herein set out but disseminated as aforesaid purport to be descriptive of the therapeutic value of respondent's preparation and of its effectiveness in use. In the manner and by the means aforesaid, respondent represents directly and by implication that the use of such preparation will cure corns and callouses and prevent the formation and recurrence thereof, and will promptly stop the pain caused by corns and prevent the recurrence thereof.

PAR. 5. The aforesaid statements and representations by respondent with respect to the therapeutic value of such preparation and of its effectiveness in use are false, misleading, and untrue. In truth and in fact, such preparation will not cure corns and callouses and will not prevent the formation and recurrence thereof. Such preparation may have an analgesic effect and mitigate the pain caused by corns but the use of such preparation will not promptly stop the pain caused by corns and will not prevent the recurrence thereof.

PAR. 6. Each and all of the false and misleading representations made by the respondent in its advertising in newspapers and magazines, in offering for sale, and selling, its product, as hereinabove set out, had, and now has, the tendency and capacity to, and does, mislead, and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the purchasing public has purchased a substantial volume of respondent's product with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing like and similar products or other products and treatments intended, designed and used for similar purposes and who truthfully advertise their products and effectiveness thereof when used. As a result thereof, injury has been done, 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. 7. In the course and conduct of its said business and since March 21, 1938, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of, false adver-

tisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false and misleading representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Just a few drops at a time is all that is necessary. The corn is quickly put to sleep—pain is scientifically deadened. Soon the corn lifts right out. It's as easy as that—even with the most painful corns and callouses.

Just a few drops of this clear liquid are enough. * * * It puts the corn to sleep and soon you can lift the corn right out * * *.

There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * * This scientific remedy, a clear liquid, gets at the real trouble, the roots of the corn. Freezone soon lets you lift the corn out completely. Even more. Freezone rapidly puts the corn to sleep—deadens the pain. * * *

CORNS LIFT RIGHT OUT. Freezone does it. Put the corn to sleep, then in a few days you lift it right out with the fingers.

In the manner and by the means aforesaid, respondent represents directly and by implication that corns have roots and that such preparation will remove the roots of corns, will deaden pain caused by corns and prevent the recurrence thereof, and that the entire corn can be removed by use of the fingers by reason of one application of such preparation.

PAR. 8. The aforesaid statements and representations by the respondent relative to the therapeutic value of such preparation and of its effectiveness in use are deceptive, misleading, and untrue and constitute false advertisements. In truth and in fact, corns do not have roots and consequently such preparation will not remove the roots of a corn. Such preparation may have an analgesic effect and mitigate the pain caused by corns but will not deaden such pain or prevent the recurrence thereof. The entire corn cannot be removed by use of the fingers by reason of one application of such preparation. In fact, it is necessary to make repeated applications of such preparation to the corn and to remove the cornified layers gradually by peeling off the tissue dissolved after each application of the preparation.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's aforesaid medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, in paragraphs 1 to 6, inclusive, 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.

The aforesaid acts and practices of respondent, as herein found, in paragraphs 1, 2, 7, 8, and 9, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 a stipulation as to the 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, Wyeth Chemical Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of a preparation for the removal of corns or callouses now designated as "Freezone," or of any other preparation containing substantially the same ingredients or possessing similar therapeutic properties whether sold under the name of "Freezone" or under any other name or names, do forthwith cease and desist from:

1. Representing that said product, when used, will cure corns or callouses or prevent the formation or recurrence of corns or callouses.

2. Representing that said product, when used, will promptly stop the pain caused by corns or prevent the recurrence of pain caused by corns.

3. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is

defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a preparation for the removal of corns, now designated by the name of "Freezone," or any other preparation for the removal of corns composed of substantially the same ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name, or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said product, which advertisements represent, directly or through implication, that corns have roots or that the preparation "Freezone" will remove the roots of corns or will deaden pain caused by corns or will prevent the recurrence of corns, or that an entire corn can be removed by the use of the fingers by reason of one application of such preparation.

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

HART, SCHAFFNER & MARX, AND WALLACH'S, INC.

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

Docket 3560. Complaint, Aug. 29, 1938. Decision, July 10, 1939

Where a corporation engaged in manufacture, sale and distribution of men's clothing, and subsidiary thereof engaged in sale and distribution of men's clothing and furnishings, and in featuring, in retail trade, products of former, and, as thus engaged, in selling their said products to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of men's wearing apparel made from wool, silk, rayon and other fibers, in commerce among the various States and in said District—

(*a*) Attached to garments made by said corporation and sold and distributed by it and by said subsidiary, labels which displayed under name of said manufacturing corporation, designation "Silkool" and legend "Cool, sheer, porous, style retaining. Made of 50% natural silk. 50% man made silk (acetate)"; and

(*b*) Made use also of other label bearing word "Silkool" without qualification, and advertised their said products under said name in newspapers and other periodicals of interstate circulation, and supplied to dealers purchasing its products electrotype mats, for newspaper advertisements, featuring said word, together with legend "What's the secret of this unique fabric? A blend of 50% natural silk and 50% man made silk (Acetate);"

Facts being garments thus advertised and offered were not, as thus represented, composed wholly of silk, product of cocoon of silkworm, as long understood by consuming public generally from word "silk," but were composed of wild silk and rayon of about equal parts, and use of word "acetate," not generally understood by substantial portion of purchasing public as identifying product as rayon, did not place purchasers on notice that fabric thus designated was in fact rayon and not silk, products of which have long been held in great public esteem and confidence for their preeminent qualities;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such statements and representations were true, and that garments in question were composed entirely of silk, and to induce purchase of their said products as result of such erroneous and mistaken belief, and to divert unfairly trade to them from competitors who do not misrepresent the goods which they manufacture and offer:

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

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

Mr. James L. Fort for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., and *Mr. George S. Ward*, of Washington, D. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Hart, Schaffner & Marx, 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 36 South Franklin Street, in the city of Chicago, State of Illinois.

Respondent, Wallach's, 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 Fifth Avenue and Thirty-third Street, in the city of New York, State of New York. Respondent, Wallach's, Inc., is a wholly-owned subsidiary of, and is controlled and directed by, respondent Hart, Schaffner & Marx. Respondent, Wallach's, Inc., is hereinafter referred to on occasion as the respondent subsidiary.

Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of men's clothing. Respondent subsidiary is now, and for many years last past has been, engaged in the sale and distribution of the respondent's products to the retail trade. Respondent and respondent subsidiary cause, and at all times herein mentioned have caused, respondent's said goods, when sold, to be shipped from their respective places of business in the city of Chicago, State of Illinois, and in the city of New York, State of New York, to the purchasers thereof located in the various States of the United States other than Illinois and New York, and in the District of Columbia. Respondent and respondent subsidiary maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Respondent and respondent subsidiary are now, and have been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of men's wearing apparel made from silk, rayon, cotton, and other fibers, 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 businesses, as mentioned in paragraph 1 hereof, respondent and respondent subsidiary, in soliciting the sale of and selling certain of respondent's products to their respective customers, attach to certain garments manufactured by respondent and sold and distributed by it and by respondent subsidiary tags reading as follows:

HART, SCHAFFNER & MARX

SILKOOL

Cool, sheer, porous, style retaining Made of 50% natural silk. 50% man made silk (acetate).

Another type of label used by respondent and by respondent subsidiary in the sale and distribution of respondent's products bears the word "SILKOOL" without any qualification. In soliciting the sale of and selling said products, and for the purpose of inducing the purchase thereof, respondent and respondent subsidiary also caused, and now cause, 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 "SILKOOL." Respondent also supplied to dealers purchasing its product certain electrotype mats, for use in newspapers, containing advertisements of certain of its suits in which the word "SILKOOL" was in larger type and appeared much more prominently than any other word printed on the mat. Under this name was printed, among other things, the following:

What's the secret of this unique fabric. A blend of 50% natural silk and 50% man made silk (Acetate).

The foregoing statements and representations made by the respondent and respondent subsidiary, as in this paragraph set out, serve as representations to dealers in men's wearing apparel and to the members of the purchasing public that such products, so advertised and offered for sale, were and are products composed wholly of silk. The representations hereinabove set forth were and are false and misleading, in that said products so represented, designated, and referred to, are not, and were not, composed wholly of silk, the product of the cocoon of the silkworm, but are and were composed of wild silk and rayon in about equal parts.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the 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.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is by the purchasing and consuming public practically indistinguishable from silk.

PAR. 4. There are, among the competitors of respondent and of respondent subsidiary, as described in paragraph 1 hereof, those who do not misrepresent the goods manufactured and offered for sale by them.

The use by respondent and respondent subsidiary of the false, deceptive, and misleading statements and representations set forth herein 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 belief that such statements and representations are true, and that said garments were composed entirely of silk, and into the purchase of said respondent's products as a result of such erroneous belief. By the statements and representations aforesaid, trade is diverted unfairly to respondent and respondent subsidiary from the competitors referred to in paragraph 4 hereof. As a result thereof, injury is being done, and has been done, by respondent and respondent subsidiary 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 respondent and respondent subsidiary, as herein alleged, are all to the prejudice of the public and of their competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 29, 1938, issued, and on August 30, 1938 served its complaint against respondent Hart, Schaffner & Marx and Wallach's, Inc., corporations, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. The respondents filed their answer on September 19, 1938. Subsequently a stipulation as to the facts was entered into between the attorneys of record and said stipulation was accepted and approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer and the stipulation as to the facts 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, Hart, Schaffner & Marx, 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 36 South Franklin Street, Chicago, Ill. Respondent, Wallach's Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at Fifth Avenue and Thirty-third Street, New York, N. Y. Respondent Wallach's, Inc., is a wholly owned subsidiary of, and is controlled and directed by, respondent Hart, Schaffner & Marx. For convenience, when both respondents are referred to hereinafter they will be referred to as respondents. When respondent, Hart, Schaffner & Marx is referred to, it will be as respondent; when respondent Wallach's, Inc., is referred to, it will be as respondent subsidiary.

Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of men's clothing. Respondent subsidiary is now, and for many years last past has been, engaged in the sale and distribution of men's clothing and furnishings, featuring in retail trade the products of respondent. Respondent and respondent subsidiary cause and at all times herein mentioned have caused, respondent's said merchandise when sold to be transported from their respective places of business in the city of Chicago, State of Illinois, and the city of New York, State of New York, to purchasers thereof located in the various States of the United States other than Illinois and New York, respectively, and in the District of Columbia.

The respondents maintain, and at all times herein mentioned have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Respondents are now and have been in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's wearing apparel made from wool, silk, rayon, and other fibers, 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 businesses as mentioned in paragraph 1 hereof, and in soliciting the sale of and selling cer-

tain garments to their respective customers, respondents attach to said garments manufactured by respondent and sold and distributed by it and by respondent subsidiary labels reading as follows:

HART, SCHAFFNER & MARX
SILKOOL

Cool, sheer, porous, style retaining. Made of 50% natural silk. 50% man made silk (acetate).

Another type of label used by respondent and respondent subsidiary in conjunction with label just referred to in the sale and distribution of respondent's products bears the word "SILKOOL" without any qualification. In soliciting the sale of, and selling, said products, and for the purpose of inducing the purchase thereof, respondents also caused advertising matter to be inserted in newspapers and other periodicals having an interstate circulation wherein such products of respondent were described and referred to as "SILKOOL." Respondent also supplied to dealers purchasing its product certain electrotype mats, for use in newspapers, containing advertisements of certain of its suits in which the word "SILKOOL" was in larger type and appeared much more prominently than any other word printed on the mat. Under this name as printed, among other things, the following:

What's the secret of this unique fabric? A blend of 50% natural silk and 50% man made silk (Acetate).

The foregoing statements of respondents as in this paragraph set out served as representation to dealers in men's wearing apparel and to the members of the purchasing public that such products so advertised and offered for sale were products composed wholly of silk. In fact the aforesaid products were not composed wholly of silk, the product of the cocoon of the silkworm, but were composed of wild silk and rayon of about equal parts.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the 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.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk, in that it has the appearance and feel of silk, and is by the purchasing and consuming public, practically indistinguishable from silk.

The word "acetate" used by respondents as above set forth, is not generally understood by a substantial portion of the purchasing public to identify a product as rayon, or to place said purchasers on notice that the fabric so designated is in fact rayon and not silk.

PAR. 4. There are among the competitors of respondents, as described in paragraph 1 hereof, those who do not misrepresent the goods manufactured and offered for sale by them.

The use by respondents of the methods hereinabove described had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true, and that said garments were composed entirely of silk and to induce the purchase of said respondents' products as the result of such erroneous beliefs. The aforesaid statements and representations of respondents had the capacity and tendency to unfairly divert trade to respondents from the competitors referred to in this paragraph.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 respondents, and a stipulation as to the facts, in which stipulation respondents waive all intervening procedure and further hearing as to said facts, 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 respondents, Hart, Schaffner & Marx, and Wallach's, Inc., corporations, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's clothing and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified word "Silk" or "Silkool" or any other word or words of similar import or meaning, to designate or describe fabrics which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm, except that in the case of a fabric or product composed in part of unweighted silk and in part of materials other than unweighted silk, such words may be used as descriptive of the silk content if there is used in immediate connection or conjunction therewith, in letters of equal size and conspicuousness,

a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent;

2. Advertising, offering for sale or selling men's clothing or any other similar products composed in whole or in part of rayon without clearly disclosing the fact that such men's clothing or similar products are composed of rayon and when such clothing or similar products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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.

IN THE MATTER OF

SCHALL 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 3776. Complaint, Apr. 29, 1939—Decision, July 10, 1939

Where a corporation engaged in manufacture and sale of candy including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumer thereof and which included assortments composed of number of small chocolate covered egg-shaped pieces of candy, number of larger size chocolate covered candy bars, and push card, for sale under a plan and in accordance with said card's explanatory legend pursuant to which purchaser, pushing by chance certain numbers, received for his penny, in addition to one of said egg-shaped pieces, as premium one of such larger candy bars, and certain other numbers entitled persons securing same, by chance, to four of such premiums, and last number in each of three sections into which card was divided entitled persons securing same to three of such premiums—

Sold to wholesalers, jobbers, and retailers for display and resale to purchasing public by retail dealer purchasers thereof, in accordance with aforesaid or similar sales plan, such or similar 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 or similar plans, under which said larger bars were distributed to purchasing public wholly by lot or chance and involving game of chance or sale of a chance to procure additional pieces or bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with 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;

With result that many persons were attracted by said sales plan or method employed by it in the sale and distribution of its said candy and by element of chance involved therein and were thereby induced to buy and sell its said candy in preference to that of said competitors who do not use such or equivalent methods, and with effect, because of such game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent methods; to the substantial injury of competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Schall Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Schall Candy Co., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located in the city of Clinton, State of Iowa. 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 dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from his principal place of business in the city of Clinton, Iowa, to purchasers thereof in the various other States of the United States and 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 by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been 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 and in the District of Columbia.

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 so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of small chocolate covered egg-shaped pieces of candy and medium sized chocolate covered candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into 3 sections and

each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within the said disk is a number which entitles the purchaser thereof to additional and larger pieces of candy when said number compares with the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to additional pieces of candy. The sales are 1 cent each and those not securing a winning number receive 1 of the smaller pieces of candy. The said card bears statements or legends as follows:

YOUR LUCKY DAY FOR 1¢.

Everybody Wins

All Numbers Ending in 5 receive One Premium

No. 50, 100, 150 Receive Four Premiums

LAST NUMBER IN EACH SECTION RECEIVES THREE PREMIUMS

All Other Numbers Receive One Chocolate Egg

Sales of respondent's candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondent of said sales plan or method in the sale of its candies and the sale of said candies by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candies to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost or such larger pieces of candy in the manner alleged. Many persons, firms, and corporations who sell and distribute candy in

competition with respondent, as above alleged, 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its candies and in the element of chance involved therein and are thereby induced to buy and sell respondent's candies in preference to candies of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 29, 1939, issued and on May 1, 1939, served its complaint in this proceeding upon respondent Schall Candy Co. charging it with the use of unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the 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 fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, 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, Schall Candy Co., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located in the city of Clinton, State of Iowa. 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 dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Clinton, Iowa, to purchasers thereof in the various other States of the United States other than the State of Iowa and 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 by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been 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 and in the District of Columbia.

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 so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of a number of small chocolate-covered egg-shaped pieces of candy and a number of larger sized chocolate covered candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into 3 sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Sales are 1 cent each and each purchaser is entitled to 1 of said small pieces of candy. Concealed within the said disks are numbers which entitle the purchasers thereof to said larger bars of candy when said numbers compare with the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to said larger bars of candy. The said card bears statements or legends as follows:

YOUR LUCKY DAY FOR 1¢.

Everybody Wins

All Numbers Ending in 5 Receive One Premium

No. 50, 100, 150 Receive Four Premiums

LAST NUMBER IN EACH SECTION RECEIVES THREE PREMIUMS

All Other Numbers Receive One Chocolate Egg

Sales of respondent's candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until purchases have been made and the said disks separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondent of said sales plan or method in the sale of its candies and the sale of said candies by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candies to the purchasing public by the method and plan hereinabove found involves a game of chance or the sale of a chance to procure additional pieces or bars of candy without additional cost or such larger pieces or bars of candy in the manner found. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above found, 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its candies and by the element of chance involved therein and are thereby induced to buy and sell respondent's candies in preference to candies of said competitors of respondent who do not use the same or equivalent

methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been 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 respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts, 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, Schall Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, or any other merchandise, so packed and assembled that sales of such candy, or other merchandise, to the general public are to be made, or may be made, by means of a lottery scheme, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of, others assortments of candy, or other merchandise, together with push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices, are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

3. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, either with assortments

of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

4. Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

MONICA M. ROCK, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF DR. ARTHUR A. ROCK, DECEASED, AS SUCCESSOR TO DR. ARTHUR A. ROCK, DOING BUSINESS IN HIS OWN NAME AND ALSO AS DR. ROCK AND DR. A. A. ROCK[1]

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

Docket 2509. Complaint, Aug. 8, 1935—Decision, July 11, 1939

Where a physician, and the widow and executrix thereof, following his demise, engaged in sale and distribution of tablets and ointment for use, in accordance with directions furnished, in treatment of goiter by those thus afflicted, and in sending to prospective customers replying to their advertisements form of questionnaire with blank spaces for answers covering length of time goiter had existed, and symptoms and general history of progress of disease, for their use in making diagnosis from answers given in such questionnaires without personal contact with patient, and in competition, as thus engaged, with others likewise engaged in selling and distributing to consumers and retail drug stores, for resale to consumers, medicines and preparations designed, intended and used for treatment of said ailment and condition; in advertising their said tablets and ointments in numerous periodicals and other publications of interstate circulation, and through circulars and other

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[1] Order of June 4, 1937, substituting Monica M. Rock as respondent in proceeding in question, etc., follows:

This matter coming on for consideration by the Commission upon the record to date, and it appearing that respondent, Dr. Arthur A. Rock, died on or about July 17, 1936; and that thereafter Monica M. Rock, his widow, was appointed executrix of the estate of said Arthur A. Rock, deceased, and is now acting as such executrix; that said Monica M. Rock has tendered to the Commission a stipulation, authorized by the County Court of Milwaukee County, Wis., in which she agrees that she, as such executrix and individually, shall and may be substituted as respondent in this proceeding in the place of said respondent so deceased, and that upon such substitution being made this case may proceed in accordance with the rules of the Commission in the same manner as it would have proceeded had not said original respondent so died; and the said stipulation having been considered by the Commission and approved, and the Commission having only considered the same and being now fully advised in the premises;

It is ordered, That Monica M. Rock, individually and as executrix of the estate of Dr. Arthur A. Rock, deceased, be, and she hereby is substituted as respondent herein for Dr. Arthur A. Rock, the original respondent hereinabove named.

It is further ordered, In accordance with the terms and provisions of said stipulation, that this case now proceed as against said substituted respondent in like manner and to the same effect as it would have proceeded had not said original respondent so died, and all testimony and proceedings heretofore taken and had herein be considered in the same manner and given like effect as though said substituted respondent had been the respondent originally named in the complaint heretofore issued herein.

It is further ordered, That the title of this case shall be and same hereby is amended to read as follows:

"In the Matter of: MONICA M. ROCK, individually and as Executrix of the Estate of Dr. Arthur A. Rock, deceased, as successor to Dr. Arthur A. Rock, an individual, doing business in his own name and also under the name and style of Dr. Rock and Dr. A. A. Rock, respondent."

literature distributed throughout the United States by mail to prospective purchasers in all the States—

(*a*) Represented that said method of treatment and preparations in question, taken and used as directed, constituted scientific, efficacious, safe and proper treatment for goiter, without regard to variety or form thereof or stage to which it might have progressed, and that such treatment and preparation would cure and drive out goiter, remove cause thereof, and get rid of the enlargement or swelling occurring therewith, and that treatment and preparations were a remedy or specific for condition in question and had therapeutic value and would correct the function of the thyroid gland;

(*b*) Represented that use of medicines was proper and efficacious treatment in all types of goiter, and that surgical operations therefor were unnecessary and would not remove the cause, and were generally inefficacious and dangerous, and that they could and had accurately correctly diagnosed cases of goiter from answers sent in question blanks furnished as above indicated, without physical examination and personal observation of customer, and that presence of goiter might be determined from answers thus submitted, and that individual in question had successfully treated goiter by mail and could successfully do so; and

(*c*) Represented that treatment and preparation in question were harmless to all customers in all cases, and constituted the only treatment and preparation which could be used efficaciously in treating such conditions, and that other treatments and preparations were old style and worthless, and that treatment and preparation in question were a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter;

Facts being it is impossible to diagnose case of goiter with any degree of accuracy from such answers or without personal observation and physical examination of patient by physician, layman can neither determine whether he actually has goiter or type thereof, of several, with which, if any, he may be afflicted, tablets and ointment in question were not scientific, efficacious, safe and proper treatment for any type of said condition and would not cure or drive out same, remove causes thereof, or absorb and get rid of enlargement or swelling occurring therewith, medication is not proper and efficacious treatment for all types, but surgery, in some, is only effective remedy, neither individual had or could diagnose cases of goiter from answers submitted as above set forth and furnished without physical examination and personal observation of patient, said tablets were not harmless to all, but might cause injury through reliance thereon of patients and consequent failure to secure medical care, surgical operations in certain types are not dangerous and constitute, as aforesaid, only effective remedy, said tablets and ointment were not only treatment which could be used, and were not efficacious in such treatment, as contrasted with others which were, and were not old style and worthless, they had not successfully treated and could not successfully treat such ailment by mail, and their said tablets or ointments were not remedy or cure for the various bodily ailments which occur with or are usually found present in cases thereof;

With result that many persons, relying upon such false and misleading representations of said individuals as to efficacy of their tablets and ointments in treatment of goiter, purchased same, and trade was thereby diverted

to them from competitors engaged in sale in interstate commerce to consumers, and to retail drug stores for resale to consumers, of medicines and medicinal preparations designed, intended and used efficaciously in treatment of such condition:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. Allen C. Phelps and *Mr. James I. Rooney* for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., for respondent.

Complaint

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Dr. Arthur A. Rock, an individual, doing business in his own name and also under the name and style of Dr. Rock and Dr. A. A. Rock, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, Dr. Arthur A. Rock, is the sole owner and manager of a certain business conducted by him in his own name and also under the name and style of Dr. Rock and Dr. A. A. Rock. That said respondent has owned, maintained, and operated said business since prior to April 1929, and has, and has had during said time, his office and place of business in the city of Milwaukee, State of Wisconsin.

Par. 2. That said business so owned, maintained, and operated by respondent consists in the offering for sale, sale and distribution in interstate commerce of a method of treatment for use by those of the general public afflicted with goiter. Said method of treatment consists in the use by the customer of certain medical preparations or tablets and an ointment, prepared and sold by respondent, to be used in accordance with directions furnished by respondent, the method of treatment prescribed being practically the same for all cases treated, except for a differentiation for sex. Respondent in the course and conduct of the said business causes his said preparations and products to be transported in interstate commerce from his said place of business in Wisconsin to, into and through States of the United States other than Wisconsin to the various members of the consuming public in the several states to whom they are or have been sold. Respondent

usually sells and distributes his said products directly to the purchasing public by and through the use of the United States mails.

PAR. 3. That during the time above-mentioned other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of courses of treatment, medicines and preparations designed, intended and used for the same general purpose as respondent's method of treatment, medicines and preparations, and also other medicines and preparations designed, intended and used for the treatment of the various bodily ailments that accompany or produce the condition for which respondent's said medicines and preparations are advertised as a remedy, as hereinafter shown, and such other individuals, firms, and corporations have caused and do now cause their said treatments, medicines and preparations, when sold by them, to be transported from various States of the United States to, into and through States other than the State of the origin of the shipment thereof. That said respondent has been during the aforesaid time, in competition in interstate commerce in the sale and distribution of the said treatment and preparations with such other individuals, firms and corporations. That said competing products are sold directly to the consumer and also to retail drug stores for resale to the consumer on prescription and otherwise, and transmitted through the United States mail.

PAR. 4. That respondent in advertising his said method of treatment of goiter causes advertisements to be inserted in magazines and other publications circulated to the purchasing public in the various States of the United States and also distributes form letters, question blanks, a copyrighted book, advertising circulars and folders by mail to prospective customers in various States of the United States, which said advertisements, copyrighted book, form letters, question blanks, advertising circulars and folders represent or imply: That said method of treatment when followed, and said preparations, tablets, and ointments when taken and used as directed constitute a scientific, efficacious, safe, and proper treatment for goiter (except exophthalmic), without regard to the variety or form thereof or the stage to which the goiter may have progressed; that respondent's treatment and preparations will cure and drive out goiter, remove the cause thereof, and absorb and get rid of the enlargement or swelling occurring therewith; that respondent's treatment and preparations are a remedy or specific for goiter, the same have a therapeutic value and will correct the functioning of the thyroid gland; that the use of medicines is the proper and efficacious treatment in all types of goiter;

that respondent can and has accurately and correctly diagnosed cases of goiter from answers submitted to question blanks furnished by him without a physical examination and without personal observation of the customer; that the presence of goiter can be determined from answers so submitted on such question blanks; that respondent's treatment and preparations are harmless to all customers in all cases; that surgical operations for goiter are unnecessary, do not remove the cause of goiter and are generally unefficacious and dangerous; that respondent's treatment and preparations are the only treatment and preparations which can be used efficaciously in treating goiter and that other treatments and preparations are "old style" and worthless; that respondent can and has successfully treated goiter by mail; that respondent's treatment and preparations are a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter; and other representations of like import. That respondent in advertising his said treatment and preparations as aforesaid causes advertisements to be inserted in magazines or other publications of general circulation among the several States, an example of which is as follows:

GOITRE NOT A DISEASE

Milwaukee, Wis.—It has been brought to light by scientific research that goitre is not a disease and is not to be treated as such. Dr. A. A. Rock, Dept. 705, Box 737, Milwaukee, Wis., a prominent goitre specialist for over 30 years has perfected a different method of treatment which has proven highly successful. He is opposed to needless operations. Dr. Rock has published a copyrighted book at his own expense which tells about goitre and this treatment. He will send this book free to anyone interested. Write him today.

To those who answer such advertisements as the above, respondent sends by mail various form letters, question blanks, a copyrighted book, advertising circulars and folders containing many statements and representations as aforesaid in regard to such treatment and preparations, among which are the following:

PHOTOGRAPH

2 Women

Yes my goitre is gone and now I am well and happy. Thousands have said this and so may you if you will only read and believe what I have to say.

Treat goitre by
Removing the Cause
Absorbing the Enlargement

PHOTOGRAPH

One Woman

In Dancing Posture

Dances from sheer happiness because her swelling of the neck is gone!

PHOTOGRAPH

(Woman Looking into Hand Mirror)

Oh! How happy, the swelling is gone.

PHOTOGRAPH

(Woman's Head with Beautiful Neck)

A neck and throat restored to normal adds wonderfully to the appearance of any woman, a goitre ruins it. Be wise, *get rid* of your swelling and improve your appearance.

PHOTOGRAPH

(Man Admiring Woman)

Why Susan! Your throat looks as natural and nice as when I saw you the first time!

Yes, Bob, that treatment is surely wonderful; and I feel so much better and so happy that—that horrid swelling is gone.

My treatment drives goitre out!

The object is to have the combined treatment, of ointment and tablets, to absorb the overgrowth of tissue and to correct the functioning of the gland.

* * * I picked up a paper with your advertisement and used your goitre treatment for *two* of our other *boys* and they *got well of their goitres* * * * Mike Mattson, Independence, Wis.

* * * you can prove what I claim by using full month's treatment.

In fact, my treatment is sound and so favorably known all over the country that I don't have to send out any sample treatments.

I have such success in treating goitre.

My method of treating goitre is based upon many years of experience and the following principles, viz: To re-establish the natural function of the thyroid gland to absorb the overgrowth of tissue, to tone up the system to remove toxins (poisons) and to overcome any so-called "female trouble" if possible.

It is now conceded by the medical profession in general and also recognized by the people that goitre can be prevented and overcome by the proper use of certain medicines. I have known this to be true ever since 1902 and as a result nearly 200,000 persons in all parts of the world have used my treatment.

I feel very proud that I was able to introduce a treatment for goitre which possesses that valuable addition, Dr. Rock's Special Treatment Tablet No. 2 (yellow) for women—No. 3 (pink) for men, which act directly upon the reproductive organs and in that way indirectly upon the goitre, MAKING THE TREATMENT MORE EFFECTIVE AND MORE RAPID IN ACTION.

I have treated thousands of cases, I get splendid results * * *

That I have treated goitre for 30 consecutive years should convince any fair minded person that I must have something good.

Remember, if you are a man, a woman or a child, and have a goitre, I have a treatment for your trouble.

Goitre is, as a rule, a stubborn thing and it requires patience and perseverance to overcome it, so when you begin treatment make up your mind to *stick to it every day until the goitre is entirely gone.* Don't quit treatment too soon. *Be sure that the goitre is completely gone.*

My treatment has been successful in some of the worst goitres that I have ever seen.

With my treatment I have relieved a goitre from the neck of my own sister, a woman over 50 years of age, and also of her daughter, my niece, and a cousin, besides friends and acquaintances too numerous to mention.

[PHOTO-GRAPH]	MY MESSAGE TO GOITRE SUFFERERS	[PHOTO-GRAPH]

Over a quarter of a century ago I developed a treatment for goitre which has been used in nearly every civilized country on earth, and by between one and two hundred thousand persons, young and old. That treatment was, in my opinion, the most successful treatment ever offered the general public, but through long experience it was found that the reproductive organs play a very important part in any condition whereby the thyroid gland is abnormally affected and I found that if I directed my treatment at both the reproductive organs and the goitre at the same time results were far more satisfactory and more rapid. To put it in plain words—I always had a good treatment for goitre, but I have now a treatment which is, in my opinion, far better, for I have added Dr. Rock's Special Treatment Tablet No. 2 (yellow—for women), and Dr. Rock's Special Treatment Tablet No. 3 (pink—for men), a combination of wild plant extracts which act directly upon the reproductive organs and thus indirectly upon the goitre.

When deciding upon a treatment for your goitre be sure that you get a treatment which has something which will act favorably on the reproductive organs, if you don't get that—results may not be what you expect.

with my
NEW TREATMENT
Results
MORE RAPID
MORE LASTING
May be Expected

Don't waste time and money with the old style treatment for goitre. I speak from an experience of over 30 years and my honest advice is make use of my new method of treatment, its results should please and surprise you.

Sincerely,

DR. A. A. ROCK,
Milwaukee, Wis.

* * * my treatment has brought results * * * *in removing goitres which I thought hopeless.*

There is an underlying cause for every goitre, by operation a part of the goitre is cut out but DOES THAT REMOVE THE CAUSE? That is a question and what is left may grow again, as thousands have found out.

NOTE: Few days pass that I do not receive letters from persons who were operated and telling me the trouble has returned.

Remember, my treatment can be taken with any other medicine, at any time, it will not affect the heart or stomach, nor the weakest system. It will not affect a nursing baby and an expectant mother should take treatment for her goitre for her own good and the good of her coming child.

A pregnant woman should use goitre treatment for two very important reasons: First, to keep the goitre from growing which it is apt to do during pregnancy and to remove it entirely if possible. Second, so that the coming

baby will have a normal thyroid gland, and not be born with a goitre (congenital goitre). This is very important, expectant mothers, remember this!

I use *my medicines* both locally and internally and they are of such a nature that *they are safe to use* and *cause no distress in any way.*

You cannot do harm by treating a goitre properly, great good to both body and mind follows the successful treatment of goitre, never does any harm follow such treatment.

My treatment will not impair your health.

and others of like import, some of which are contained in testimonials reproduced by respondent in its said advertising literature.

PAR. 5. That, in truth and in fact, respondent's said method of treatment when followed, and his preparations, tablets, and ointments when taken and used as directed, do not constitute a scientific, efficacious, safe, or proper treatment for goiter (except exophthalmic), without regard to the variety or form thereof, or the state to which the goiter may have progressed; that respondent's treatment and preparations will not cure and drive out goiter, will not remove the cause thereof, nor absorb and get rid of the enlargement or swelling occurring therewith; that respondent's treatment and preparations are not a remedy or specific for goiter, nor do the same have any therapeutic value, nor will they correct the functioning of the thyroid gland; the use of medicines is not the proper and efficacious treatment in all types of goiter, but on the contrary some types and cases require a surgical operation and others require no medical treatment whatever; respondent has not and cannot accurately and correctly diagnose cases of goiter from answers submitted by customers to question blanks furnished by him, without a physical examination and without observation of the customer; the presence of goiter cannot be determined from answers submitted on such question blanks; respondent's treatment and preparations are not harmless to all customers in all cases, but on the contrary when used by purchasers thereof in accordance with directions furnished by the respondent they may and often do permanently or temporarily injure such purchasers either as a result of the effects of the properties in said medicines and preparations furnished by the respondent, or because of consequent postponement of a proper treatment for goiter; surgical operations for goiter are often necessary and do remove the cause of goiter and are generally efficacious and may be safely undergone; respondent's treatment and preparations are not the only treatment and preparations which can be used efficaciously in treating goiter, and other treatments and preparations are not "old style" and worthless; respondent cannot and has not successfully treated goiter by mail; respondent's treatment and preparations are

not a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter.

That all the statements, representations, and implications set forth in paragraph 4 above are either wholly unfounded in fact or are greatly exaggerated or wholly inaccurate.

PAR. 6. That the representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said method of treatment, medicines and preparations are a cure, remedy, or a scientific, efficacious and proper treatment for goiter (except exophthalmic) regardless of the cause thereof, the variety or form which the same may assume or the stage to which it has progressed; that respondent's method of treatment, medicines and preparations will cure and drive out goiter, remove the cause thereof, and absorb and get rid of the enlargement or swelling occurring therewith; that respondent's treatment and preparations are a remedy or specific for goiter and will correct the functioning of the thyroid gland; that respondent can and has accurately and correctly determined the presence of goiter and diagnosed cases thereof by mail; that said treatment when followed and preparations when used are harmless and are the only treatment and preparations which can be used efficaciously in treating goiter; that respondent's treatment and preparations are a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter; when, in truth and in fact, such are not the facts, or only to a limited extent. That such representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said method of treatment and preparations because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of treatments and preparations of the same or similar kind and of those adapted and used for the treatment of goiter and the various ailments and conditions that accompany and induce the same.

PAR. 7. The above acts and things done by the respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of August, A. D. 1935,

issued and thereafter served its complaint in this proceeding upon the respondent Dr. Arthur A. Rock, an individual doing business under his own name and also under the name and style, "Dr. Rock" and "Dr. A. A. Rock," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuing 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 Allen C. Phelps, attorney for the Commission, and in opposition thereto by John A. Rosen, attorney for the respondent, before Joseph A. Simpson, an examiner of the Commission theretofore appointed by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Said respondent departed this life on the 17th day of July, A. D., 1936, and his widow, Monica M. Rock, being the sole beneficiary under his will and the executrix thereof, was substituted as respondent, by order of the Commission dated June 4, A. D., 1937. Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint of the Commission, the answer thereto, the testimony and other evidence, and briefs in support of the complaint and in opposition 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 Dr. Arthur A. Rock was an individual who was doing business in his own name and also under the name and style "Dr. Rock" and "Dr. A. A. Rock." His principal place of business was located at 5409 Vliet Street, Milwaukee, Wis.

PAR. 2. Respondent Dr. Arthur A. Rock departed this life on the 17th day of July, A. D., 1936. Monica M. Rock, widow of said respondent and sole beneficiary under his last will and testament, was, on the 24th day of July, A. D., 1936, duly appointed executrix of the estate of said respondent. On the 15th day of August, 1936, the County Court of Milwaukee County, Wis., authorized and empowered the said Monica M. Rock to conduct the business of her late husband, Dr. Arthur A. Rock, and said Court, on the 14th day of November, A. D., 1936, authorized and empowered said Monica M. Rock to substitute herself in the place and stead of her deceased husband, Dr. Arthur A. Rock, as respondent in this proceeding. On June 4, 1937, the Commission, acting upon motion of said Monica M. Rock, sub-

stituted the said Monica M. Rock as respondent in this proceeding, in the place of respondent Dr. Arthur A. Rock.

Respondent Monica M. Rock stipulated that, as executrix of the will of her late husband, respondent Dr. Arthur A. Rock, she would conduct the hereinafter described business formerly conducted by her deceased husband, respondent herein, during the period of her executrixship, and thereafter in her individual capacity, in the same manner and by the same methods as were formerly used by respondent Dr. Arthur A. Rock.

PAR. 3. Respondent Dr. Arthur A Rock was a physician duly licensed to practice medicine in the State of Wisconsin, and from 1906 to the date of his death was engaged in the sale and distribution of tablets and an ointment to be used in accordance with directions furnished by said respondent in the treatment of goiter by persons thus afflicted. Said respondent, in the course and conduct of his said business, caused the said tablets and ointment to be transported from his principal place of business, in the State of Wisconsin, to purchasers thereof located in all the States of the United States.

PAR. 4. Respondents have been, and respondent Monica M. Rock now is, in competition in interstate commerce, in the sale and distribution of said tablets and ointment, with individuals, firms, and corporations engaged in the business of selling in interstate commerce, to consumers and to retail drug stores for resale to consumers, medicines and preparations designed, intended and used for the treatment of goiter.

PAR. 5. Respondents have advertised their said tablets and ointment in numerous magazines and other publications having interstate circulation, and also by means of circulars and other literature distributed through the United States mails to prospective purchasers in all the States of the United States. Respondents have also sent to prospective customers who answer their advertisements a form of questionnaire with blank spaces for answers, covering the length of time the goiter has existed, the symptoms and a general history of the condition and progress of the disease, and from the answers given in such questionnaires the respondents make diagnosis without having had personal contact with the patient.

PAR. 6. Among the representations made by the respondents in their advertising matter are the following:

1. That said method of treatment, when followed, and said preparations, tablets and ointments, when taken and used as directed, constitute a scientific, efficacious, safe, and proper treatment for goiter (except exophthalmic), without regard to the variety or form thereof, or the stage to which the goiter may have progressed.

2. That respondent's treatment and preparations will cure and drive out goiter, remove the cause thereof and absorb and get rid of the enlargement or swelling occurring therewith.

3. That respondent's treatment and preparations are a remedy or specific for goiter, that same have a therapeutic value and will correct the functioning of the thyroid gland.

4. That the use of medicines is the proper and efficacious treatment in all types of goiter.

5. That respondent can diagnose, and has accurately and correctly diagnosed cases of goiter from answers submitted in question blanks furnished by him, without a physical examination and without personal observation of the customer.

6. That the presence of goiter can be determined from answers so submitted on such question blanks.

7. That respondent's treatment and preparations are harmless to all customers in all cases.

8. That surgical operations for goiter are unnecessary, do not remove the cause of goiter, and are generally inefficacious and dangerous.

9. That respondent's treatments and preparations are the only treatment and preparations which can be used efficaciously in treating goiter, and that other treatments and preparations are "old style" and worthless.

10. That respondent can successfully treat and has successfully treated goiter by mail.

11. That respondent's treatments and preparations are a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter.

PAR. 7. It is impossible to diagnose a case of goiter with any degree of accuracy from the answers to the above-mentioned questionnaire, or without personal observation and physical examination of the patient by a physician. There are several types of goiter and a layman can neither determine whether he actually has a goiter, or the type of goiter, if any, with which he may be afflicted.

PAR. 8. All of the representations made by respondents, as set forth in paragraph 6 hereof, are false and misleading, in that:

1. The tablets and ointment sold by respondents are not a scientific, efficacious, safe and proper treatment for any type of goiter.

2. Respondents' tablets and ointment will not cure or drive out goiter, remove the cause thereof, or absorb and get rid of the enlargement or swelling occurring therewith.

3. Respondents' tablets and ointment are not a remedy or specific for goiter, have no therapeutic value, and will not correct the functioning of the thyroid gland.

4. Medication is not a proper and efficacious treatment for all types of goiter; in some types of goiter surgery is the only effective remedy.

5. Respondents have not diagnosed, and cannot accurately and correctly diagnose, cases of goiter from answers submitted on the question blanks furnished by them, without a physical examination and personal observation of the patient.

6. The presence of a goiter cannot be determined from answers entered in said questionnaires.

7. Respondents' tablets and ointments are not harmless to all customers, and injury may be caused to patients because of their reliance on said preparations, and consequent failure to secure proper medical care.

8. In certain types of goiter surgical operations are necessary, not dangerous, and constitute the only effective remedy.

9. Respondents' tablets and ointment are not the only treatment which can be used for goiter, nor can they be efficaciously used in the treatment of goiter; there are a number of other preparations which are efficacious in such treatment, and which are not "old style" and worthless.

10. Respondents have not successfully treated, and cannot successfully treat goiter by mail.

11. Respondents' tablets and ointment are not a remedy or cure for the various bodily ailments which occur with, or are usually found present in, cases of goiter.

PAR. 9. Many persons, relying upon the false and misleading representations of the respondents as to the efficacy of their tablets and ointment in the treatment of goiter, purchase said preparations of the respondents, and, as a result, trade has been diverted to the respondents from individuals, firms, and corporations engaged in the business of selling in interstate commerce to consumers, and to retail drug stores for resale to consumers, medicines and medical preparations designed, intended and used efficaciously in the treatment of goiter.

CONCLUSION

The practices of the respondents, as set forth in the foregoing findings as to the facts, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce in violation 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, testimony and other evidence taken before Joseph A. Simpson, 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 Allen C. Phelps, counsel for the Commission, and by John A. Rosen, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Monica M. Rock, individually and as executrix of the estate of Dr. Arthur A. Rock, deceased, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of her medicinal preparations or treatment in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. that respondent's method of treatment, when followed, and respondent's preparations, when taken and used as directed, constitute a scientific, efficacious, safe and proper treatment for goiter, without regard to the variety or form thereof or the stage to which the goiter may have progressed.

2. that said treatment and preparations will cure and drive out goiter, remove the cause thereof and absorb and get rid of the enlargement or swelling occurring therewith.

3. that said treatment and preparations are a remedy or specific for goiter, that same have a therapeutic value and will correct the functioning of the thyroid gland.

4. that the use of medicines is the proper and efficacious treatment in all types of goiter.

5. that respondent can diagnose and has accurately and correctly diagnosed cases of goiter from answers submitted in question blanks furnished by her, without a physical examination and without personal observation of the customer.

6. that the presence of goiter may be determined from answers so submitted on such question blanks.

7. that respondent's treatment and preparations are harmless to all customers in all cases.

8. that surgical operations for goiter are unnecessary, do not remove the cause of goiter and are generally inefficacious and dangerous.

9. that respondent's treatment and preparations are the only treatment and preparations which can be used efficaciously in treating goiter and that other treatments and preparations are "old style" and worthless.

10. that respondent can successfully treat and has successfully treated goiter by mail.

11. that respondent's treatment and preparations are a remedy or cure for the various bodily ailments which occur with or are usually found present in cases of goiter.

It is further ordered, That the respondent shall, within 60 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.

IN THE MATTER OF

AMERICAN MEMORIAL COMPANY

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

Docket 3369. Complaint, Mar. 31, 1938—Decision, July 11, 1939

Where a corporation engaged in sale and distribution of marble and granite monuments, tombstones, and footstones, to members of purchasing public in various States and in District of Columbia, in substantial competition with others engaged in sale and distribution of such, and similar, products designed, intended, and used for same or similar purposes, including many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products; in its advertisements in magazines and newspapers circulating among the various States, and in catalogs, pamphlets, bulletins, and other literature which it disseminated to members of purchasing public in various States and in District of Columbia—

(*a*) Represented, directed and by implication, that its marble monuments were everlasting, and that tombstone selling for certain price was a 400-pound stone, facts being its said products were not everlasting and it offered and sold many stones which it represented as weighing said amount which, in truth and in fact, weighed substantially less;

(*b*) Represented that it had executed a bond which was available to purchasers as a guarantee of the quality of its products, and that such guarantee insured full satisfaction on the part of the purchaser and conformed to the rules and regulations of the United States postal laws, facts being it had not posted any such bond nor obtained any approval from Government or Post Office Department for any guarantee made incident to sale of its product, nor posted any bond with Government or anyone else which insured satisfaction on part of its customers or conformity by it with rules and regulations of the postal laws; and

(*c*) Represented that it was the manufacturer of both its marble and granite tombstones and that all profits of middlemen or commission firms were eliminated by reason of purchase of granite or marble monuments from it, facts being it did not manufacture monuments sold and distributed by it, but was merely jobber thereof, profits of middlemen and commission firms were not eliminated by reason of purchase of granite monuments from it, and it was not a manufacturer, for dealing directly with which there is preference on part of a substantial number of members of purchasing public as securing more advantageous prices and other benefits;

With effect of misleading and deceiving substantial number of members of such public into erroneous belief that said false and misleading statements and representations were true, and into purchase of its products because of such belief, and with result as direct consequence thereof, that trade in commerce, as aforesaid, was diverted unfairly to it from its competitors engaged in sale and distribution of similar products and who do not falsely represent the same or their business status:

Held, That such acts and practices as above set forth were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce.

Before *Mr. Edward E. Reardon,* trial examiner.
Mr. John Darsey and *Mr. Carrel F. Rhodes* for the Commission.
Douglas, Andrews & Cole, of Atlanta, Ga., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Memorial Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof woud be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation organized and existing under the laws of the State of Georgia, having an office and principal place of business at 2135 Piedmont Road, Atlanta, Ga. It is now, and for several years last past has been, engaged in the business of manufacturing and selling marble and granite monuments. To a substantial extent, sales of said products have been made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Georgia, pursuant to which sales, and as a part thereof, shipments are, and have been, made by the respondent from the State of Georgia through and into other States of the United States to such purchasers.

PAR. 2. There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who cause their said products, when sold, to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals, the respondent is, and has been at all times herein named, in competition in commerce as herein described.

PAR. 3. In connection with the promotion of sale, and sale of the said products in interstate commerce as aforesaid, and as an inducement for the purchase thereof, the respondent causes many false and misleading statements and representations respecting the quality and weight of its said products, and the guarantees issued and executed incident to the sales thereof to be inserted in newspapers, periodicals, and circulars which are distributed in the various States of the United States. The following statements and representations are typical,

but not all inclusive, of those made by the respondent to the foregoing effect and meaning:

This monument is built of genuine, natural quarried marble guaranteed by us to be everlasting;

400-lb. tombstone, $17.95, genuine marble and granite footstone free, lettering free;

Our bond of guarantee protects you in quality and safe delivery to destination;

One of the strongest guarantees ever given on monuments;

Buy the direct way and save the difference;

Buy direct from our factory with no middleman or commission firm involved;

This guarantee is given to you to conform to the rules and regulations of the United States mail laws, which in effect say, "you must be fully satisfied or your money back" on anything ordered by mail.

PAR. 4. Through the foregoing statements and representations, and through other similar statements not herein set-out in full, the respondent has represented that its marble monuments are everlasting; that its tombstone selling for $17.95 is a 400-pound stone; that a genuine granite footstone is furnished free in connection with the $17.95 tombstone; that respondent has executed a bond which is available to purchasers as a guarantee of the quality of respondent's products; that respondent's guarantee insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of a middleman or commission firm are eliminated by purchasing granite or marble monuments from the respondent.

The foregoing statements and representations made by the respondent in connection with the promotion of sale and sale of its said products are false and misleading. The said monuments made from marble are not everlasting. The tombstone selling for $17.95 is not a 400-pound stone and does not weigh within a hundred pounds or more of the amount represented, and no granite footstone is furnished free in connection with the purchase of the $17.95 tombstone. The respondent has not posted any bond which insures and guarantees to its customers the quality of its products. The guarantee issued by the respondent does not insure satisfaction on the part of purchasers and does not insure conformity to the rules and regulations of the postal laws of the United States Government. Respondent is not the manufacturer of the granite monuments which it sells, but on the contrary, is merely a jobber thereof.

PAR. 5. There is on the part of the general purchasing public a preference for dealing direct with the manufacturer of the product

being purchased rather than with any middleman or broker, said members of the purchasing public believing that in so doing they secure superior quality, more advantageous prices and other benefits.

PAR. 6. Respondent's false and misleading representations of and concerning its said products and its status, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that such representations are true, and have caused a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade in said commerce to the respondent from competitors who truthfully represent their products. As a result thereof, injury is now, 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. 7. The aforesaid acts and practices of the respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of March 1938, issued and thereafter served its complaint in this proceeding upon said respondent, American Memorial Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, and in opposition to the allegations of the complaint by Hamilton Douglas, attorney for the respondent, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it. Stipulations as to certain facts were made a part of the record herein by agreement of counsel of record. Said testimony, stipulations, 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, stipulations, and other evidence, and briefs in support of the complaint and in opposition 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. The respondent, American Memorial Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its principal office and place of business located at 2135 Piedmont Road, Atlanta, Ga.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing marble and granite monuments, tombstones, and footstones. Respondent sells its said monuments, tombstones, and footstones to members of the purchasing public located in the various States of the United States and in the District of Columbia, and causes said products when sold by it to be transported from its aforesaid place of business in Georgia to purchasers thereof at their respective points of location in the various States of the United States other than Georgia, and in the District of Columbia. Respondent maintains, and at all times mentioned herein 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. Respondent is, and has been during all the times mentioned herein, engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with firms and partnerships and individuals selling and distributing marble and granite tombstones, monuments, and like products designed, intended, and used for the same or similar purposes. Among such competitors in said commerce are many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said products, the respondent has caused false and misleading representations with respect to its business status, the life and duration of its tombstones, monuments, and footstones, and the guarantees executed incident to the sale thereof, to be inserted in magazines and newspapers having a circulation among and between the various States of the United States, and in catalogs, pamphlets, bulletins, and other literature disseminated by respondent to the members of the purchasing public located in the various States of the United States and in the District

of Columbia. Among and typical of such representations so used and disseminated as aforesaid are the following:

This monument is built of genuine natural quarried marble guaranteed by us to be everlasting.

400-lb. tombstone—$17.95—Genuine marble and granite foot-stone free—lettering free.

Our bond of guarantee protects you in quality and safe delivery to destination.

One of the strongest guarantees ever given on monuments.

This guarantee is given to you to conform to the rules and regulations of the United States mail laws which in effect say "you must be fully satisfied or your money back" on anything ordered by mail.

Buy direct from our factory with no middle man or commission firm involved.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly and by implication that its marble monuments are everlasting; that its tombstone selling for $17.95 is a 400-pound stone; that respondent has executed a bond which is available to purchasers as a guarantee of the quality of respondent's products; that respondent's guarantee insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of middlemen or commission firms are eliminated by reason of the purchase of granite or marble monuments from the respondent.

PAR. 6. The said statements and representations by the respondent, used and disseminated in the manner aforesaid, are false, misleading, and deceptive. In truth and in fact the tombstones, monuments, and footstones offered for sale and sold by respondent are not everlasting. The respondent has offered for sale and sold many stones which it represented to weigh 400 pounds, which stones in truth and in fact weighed substantially less than 400 pounds. The respondent has not posted a bond which insures and guarantees to its customers the quality of its products, and has not obtained any approval from the United States Government or the Post Office Department thereof for any guarantee made incident to the sale of its said products; nor has the respondent posted any bond with the United States Government or with anyone else which insures satisfaction on the part of its customers, or which insures conformity by the respondent with the rules and regulations of the postal laws of the United States Government. Respondent does not manufacture the granite monuments which it sells and distributes, but is merely a jobber thereof. The profits of middlemen and commission firms are not eliminated by reason of the purchase of granite monuments from respondent.

PAR. 7. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial number of members of the purchasing public for dealing directly with the manufacturer of a product rather than with a middleman or jobber because of the belief that in dealing with the manufacturer they secure more advantageous prices and other benefits.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that said false and misleading statements and representations are true and into the purchase of respondent's products because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its competitors engaged in the sale of and distribution of similar products and who do not falsely represent their respective products or their business status.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 answer of respondent, testimony and other evidence taken before Edward E. Reardon, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, American Memorial Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of granite or marble monuments, tombstones, or footstones in commerce between and among the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the words "everlasting" or "eternal," or any other word of similar import or meaning, or in any other man-

ner, that respondent's monuments, tombstones, or footstones are everlasting.

2. Representing that respondent's monuments or tombstones weigh 400 pounds or any other specified weight or weights unless and until such is the fact.

3. Representing that the respondent has posted a bond guaranteeing the quality of its products, or has posted a bond which insures conformity by the respondent with the laws of the United States Government or with the rules and regulations of any agency thereof, or has posted any other bond, unless and until such is the fact.

4. Representing, by means of pictorial or other representations of a factory or manufacturing plant, or in any other manner, that respondent makes or manufactures its granite monuments or tombstones unless and until it owns and operates or directly and absolutely controls the factory or plant wherein such monuments or tombstones are made or 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.

IN THE MATTER OF

MAX BERGMAN, TRADING AS INTERSTATE PREMIUM 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 3577. Complaint, Sept. 8, 1938—Decision, July 11, 1939

Where an individual engaged in sale and distribution of dresser sets, watches, bedspreads, cameras, silverware, and numerous other articles of merchandise to purchasers in the various States and in the District of Columbia—

Sold and distributed said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives certain advertising literature including a sales circular listing number of items of merchandise and prices thereof, and including pull card for use in distribution and sale of products in question under plan in accordance with which item of merchandise secured and price paid therefor and value or apparent value secured were determined by chance, in accordance with item and price disclosed by separation of particular tab selected from said card, and person operating card was compensatel, after sale of all tabs or chances and remission of amounts, by premium; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar plans varying therefrom in detail only and under which members of purchasing public were induced by apparent greater value and regular prices of some of said articles as compared to price prospective purchaser would be required to pay in event he secured one, to purchase tabs or chances in hope of receiving article of merchandise of far greater value than designated price to be paid therefor, and under which fact as to whether purchaser of said tabs received article of apparent greater value and higher regular price than that designated on such tab and which of said articles purchaser was to receive and amount to be paid therefor were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than apparent normal price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with 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 a chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect, by reason of the use of said method and because of said game of chance, of unfairly diverting trade and

custom to him from his competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston* and *Mr. Miles J. Furnas*, trial examiners.

Mr. D. C. Daniel for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Max Bergman, individually and trading as Interstate Premium Novelty Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent Max Bergman is an individual trading under the name of Interstate Premium Novelty Co. Respondent's principal office and place of business was for some time located at 689 Broadway, Brooklyn, N. Y. Since respondent discontinued the operation of his business at the address set out hereinabove, he has conducted his business from 700 Glenmore Avenue, Brooklyn, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and 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 by said respondent in such 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 sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular.

Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such

merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 the apparent 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 8, 1938 issued and

thereafter served its complaint in this proceeding upon respondent Max Bergman, individually and trading as Interstate Premium Novelty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On the 20th day of June 1939, the respondent filed an answer in which answer he admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the 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 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 Max Bergman is an individual trading under the name of Interstate Premium Novelty Co. Respondent's principal office and place of business was for some time located at 689 Broadway, Brooklyn, N. Y. Since respondent discontinued the operation of his business at the address set out hereinabove, he has conducted his business from 700 Glenmore Avenue, Brooklyn, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and 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 by said respondent in such 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 sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributes various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above described, 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being and has been done by the 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 respondent, as herein found, 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 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, Max Bergman, in which answer respondent admits all

material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to the facts, 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, Max Bergman, individually and trading under the name of Interstate Premium Novelty Co. or trading under any other name, his representatives, agents, and employees, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, or any other articles or merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

2. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

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

CHENILLE CORPORATION 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 3201. Complaint, Aug. 10, 1937—Decision, July 21, 1939

Where a corporation engaged in manufacture of chenille yarns and of loom rugs and hooked rugs for sale to jobbers and department stores, and, in selling same to purchasers in various States, in substantial competition with those engaged in manufacture and sale of hooked rugs similar thereto—

Represented as "hand-hooked" or "hand-made" rugs, machine-made rugs sold by it to department stores, and, in other instances, left with buyer, without direct representation, impression that such rugs, cost of which to it was lower than that of its former genuine hand-made rugs, were hand hooked or hand made;

Notwithstanding fact said rugs, thus represented by it and advertised by department store purchasers, thus misled, in newspapers, as "Hand-hooked, Requiring Hours and Hours to Produce," and "Hand-Made," etc., were not, as aforesaid, fashioned and produced by craftsmen expert in the art of making rugs by hand, as long understood in the rug industry from term "hand-hooked" as meaning "hand-made," and as similarly associated by purchasing public with former term and latter meaning, with their valuable good will as thus applied;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such rugs were genuine hand-made or hand-hooked rugs, purchased and used by many among the public, and especially decorators and antique collectors, in preference to the machine-made product, as much superior in quality and in durability, and into purchase of such rugs because of such erroneous and mistaken belief, and of thereby diverting trade unfairly to it from its competitors aforesaid who truthfully represent the manner of manufacture of their respective products:

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

Before *Mr. Arthur F. Thomas* and *Mr. Miles J. Furnas*, trial examiners.

Mr. DeWitt T. Puckett, *Mr. Joseph C. Fehr*, and *Mr. R. A. McOuat* for the Commission.

Mr. Samuel R. Wittelle, 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 Chenille Corporation of America, 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, Chenille Corporation of America, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at 3945 North Western Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than 2 years last past has been, and still is engaged in the business of manufacturing rugs, and in offering said rugs for sale and selling the same in commerce between the State of Illinois and the several States of the United States, and in the District of Columbia. When said rugs are sold, respondent transports, or causes the same to be transported from its place of business in the State of Illinois to the purchasers thereof located in States of the United States other than the State of Illinois, 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 rugs, thus manufactured, 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 corporations, and with firms, partnerships, and individuals engaged in the manufacture, or in the sale and distribution of rugs 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 aforesaid, the respondent in soliciting the sale of and selling its said rugs, caused and now causes said rugs to be represented to retail store customers, located in various States of the United States as "hand-hooked" or "hand-made." Pursuant to these representations by the respondent, certain of said store customers advertised, and now advertise, respondent's rugs as being "hand-hooked" and "hand-made" through the use of statements such as "Every Rug is a Work of Art, Hand-Hooked, Requiring Hours and Hours to Produce," and "Every Rug Hand-Hooked."

PAR. 3. The statements and representations of respondent referred to in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to deceive purchasers and prospective purchasers of

respondent's said rugs into the false and erroneous belief that said rugs were and are "hand-made," "hand-woven," "hand-hooked" and are hooked rugs within the common understanding of those terms as set out in paragraph 4.

PAR. 4. In the rug industry, the term "hooked rug" has for many years been understood to mean, and does mean, "hand-made rug," and the purchasing public has long associated, and still associates, with the term "hooked rug" the idea and meaning of a "hand-made" or "hand-woven" rug, fashioned and produced by craftsmen expert in the art of weaving rugs by hand. The value of the hand-made output of these craftsmen is substantial, and their rugs, designated as hooked rugs, have acquired a reputation for superior wearing qualities, and there is a valuable good will in the terms "hooked," "hand-hooked," and "hand-made" as applied to said rugs. There are also among the public many purchasers who buy and use hand-woven, hand-made, and hand-hooked rugs in preference to machine-made rugs, believing that hand-woven, hand-made, and hand-hooked rugs are superior in quality and more durable than rugs made by machine.

PAR. 5. In truth and in fact, respondent's said rugs were not, and are not made by hand, so as to be properly represented, designated, and referred to as "hand hooked," "hand-made," or as "hooked" rugs. Respondent's said rugs are not the product of hand labor nor of handcraft or artistry, but are rugs made with the aid of a machine in the form of an electrically powered needle, and are of lower cost and less beauty than rugs actually "hand-made," "hand-woven," or "hand-hooked."

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof, many manufacturers, sellers, and distributors of rugs who truthfully advertise and represent their rugs as being hand-woven, hand-made, or hand-hooked. There are also among said competitors many manufacturers, sellers, and distributors of machine-made rugs who do not advertise and represent that their rugs are or have been hand-woven, hand-made, or hand-hooked when such is not the case.

PAR. 7. 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 rugs in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 6 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. 8. 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 10, 1937, issued and served its complaint in this proceeding upon respondent, Chenille Corporation of America, 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, Joseph C. Fehr, and R. A. McOuat, attorneys for the Commission, and in opposition to the allegations of the complaint by Samuel R. Wittelle, attorney for the respondent, before A. F. Thomas and Miles J. Furnas, examiners 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 before the Commission on said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief 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. Respondent, Chenille Corporation of America, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located in the city of Chicago, State of Illinois. Respondent is now, and has been since the year 1925, engaged in the manufacture of chenille yarns, and in the manufacture of loom rugs and hooked rugs for sale to jobbers and department stores. Respondent has caused, and now

causes, said rugs, when sold, to be transported from its principal place of business in Chicago, State of Illinois, to the purchasers thereof located in the various States of the United States other than the State of Illinois. There is now, and has been for many years last past, a course of trade in commerce in said hooked rugs by respondent between and among the several States of the United States, and in the District of Columbia. Respondent is now, and has been since the year 1925, in substantial competition with other corporations and with firms and individuals also engaged in the manufacture and sale of hooked rugs, similar to those of respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In 1935 respondent employed in Chicago, and in the States of North and South Carolina, 200 or 300 home workers. It supplied or furnished yarns to these workers who made the rugs in their homes, and respondent sold the finished product. In 1935 respondent ceased this practice and used thereafter a recently invented machine, under a license from the patentee. This machine contains an electric motor which supplies the power to drive the needle. This machine is hand-guided and its product is a machine-made rug in contradistinction to a "hand-hooked" or "hand-made" rug which is made without any implement other than a simple punch, and the operator uses his own manual labor or muscular force to fabricate the rug. The cost of manufacture of a machine-made rug is about 45¢ per square foot; and the cost of a hand-made rug is from 75¢ to $1.25 a square foot.

PAR. 3. In the course and conduct of its business as herein described, respondent sold the machine-made rugs to department stores and in some instances represented them to be "hand-hooked" or "hand-made" rugs, and in other instances without direct representation left with the buyer the impression that the rugs were "hand-hooked," or "hand-made." These department stores acting under said representations or impressions then proceeded to advertise respondent's rugs in newspapers and pamphlets as "Hand-hooked, Requiring Hours and Hours to Produce," and "Hand-Made," etc.

PAR. 4. In the rug industry the term "hand-hooked" has for many years been understood to mean and does mean "hand-made." The purchasing public has long associated and still associates with the term "hand-hooked" the idea and meaning of a "hand-made" rug, fashioned and produced by craftsmen expert in the art of making rugs by hand. There is a valuable good will in the terms "hand-hooked" and "hand-made" as applied to said rugs. There are also among the public many purchasers, especially decorators and antique collectors, who buy and

use hand-made and hand-hooked rugs in preference to machine-made rugs believing that hand-made and hand-hooked rugs are very much superior in quality and more durable than rugs made by machine.

PAR. 5. There are among the competitors of the respondent many manufacturers, sellers, and distributors of rugs who truthfully advertise and represent their rugs as being hand-made or hand-hooked. There are also among said competitors many manufacturers, sellers, and distributors of machine-made rugs who do not advertise and represent that their rugs are or have been hand-made or hand-hooked when such is not the case.

PAR. 6. The aforesaid acts and practices of respondent have the capacity and tendency to, and do, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such rugs, sold and distributed by respondent, are "hand-made" or "hand-hooked," and into the purchase of such rugs because of such erroneous and mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who truthfully represent the manner of manufacture of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Chenille Corporation of America, as herein found, 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 answer of respondent, testimony, and other evidence taken before A. F. Thomas and Miles J. Furnas, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Chenille Corporation of America, a corporation, its officers, representatives, agents, and employees directly or through any corporate or other device, in connection with

the offering for sale, sale, and distribution of rugs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "hand-made" or "hand-hooked" or any other terms of similar import or meaning to designate, describe or refer to rugs which have not been made entirely by hand labor and hand craft.

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

ADELE MILLAR, DOING BUSINESS AS MME. ADELE AND CHEZ ADELE

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

Docket 3346. Complaint, Mar. 3, 1938—Decision, July 21, 1939

Where an individual engaged in sale and distribution of her "Wonder Peel Paste" for various skin ailments and conditions, to purchasers in various other States; in advertising said product in newspapers, periodicals and other publications of general circulation throughout the United States, and in circulars, booklets, and other printed matter distributed to prospective purchasers in various States—

Represented that use of said product was effective in withdrawing toxins from the skin and accelerating the chemical changes in the living cells, and in supplying new materials to repair waste tissues, and that use thereof normalized tissues by metabolic control and would prevent or remove blemishes such as wrinkles, puffs, freckles, crepey neck, pimples, blackheads, scars, pits, liver spots, and acne, facts being it was not effective for withdrawing toxins from the skin or accelerating chemical changes as aforesaid, or supplying new materials, as above set forth, to repair waste tissues, did not have any beneficial effect on metabolism of tissues or on nutrition thereof or of the skin, and would not prevent blemishes on the skin or remove or aid in the removal of blemishes such as pimples, blackheads, puffs, scars, pits, acne, or crepey neck when such blemishes were due to or persisted because of a systemic disorder or condition, or prevent, remove or aid in removal of any blemishes due to or persisting because of such condition;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of her said preparation because of such erroneous and mistaken belief, and of thereby diverting trade unfairly to her from her competitors who truthfully represent effectiveness of their respective products:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Joseph C. Fehr and *Mr. Reuben J. Martin* for the Commission.

Mr. Laurenz J. Krueger, of San Francisco, Calif., for respondent.

COMPLAINT

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

Federal Trade Commission, having reason to believe that Adele Millar, an individual, doing business under the trade names of Mme. Adele and Chez Adele, 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 in 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, Adele Millar, is an individual doing business under the trade names of Mme. Adele and Chez Adele, with her principal office and place of business located at 177 Post Street, in the city of San Francisco, in the State of California. For more than five years last past, respondent has been engaged in the sale of a certain cosmetic paste known as "Wonder Peel Paste," which is recommended for the treatment of puffs, freckles, crepey neck, wrinkles, pimples, blackheads, acne, scars, pits, discoloration of the skin such as liver spots, and other skin ailments. In the course and conduct of her business, respondent offers said cosmetic preparation for sale and sells the same in commerce between the State of California and the various other States of the United States and in the District of Columbia. When said "Wonder Peel Paste" is sold, respondent causes it to be transported from her place of business in the State of California to the purchasers thereof located in States of the United States other than the State of California and in the District of Columbia. There has been for more than 5 years last past, and still is, a course of trade and commerce in said cosmetic preparation sold 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 5 years last past has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the sale and distribution of preparations designed for similar usage 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 her business as aforesaid, the respondent, in soliciting the sale of and in selling her "Wonder Peel Paste," and for the purpose of creating a demand upon the part of the purchasing public for said cosmetic preparation, now causes, and for more than five years last past has caused, advertisements to be issued, published and circulated to and among the general public of the United States in newspapers, magazines and various other forms of printed matter, and in other ways. Respondent, through said advertisements, has made to the general public many unfair, false and misleading statements with reference to the alleged thera-

peutic value of said "Wonder Peel Paste" and its effect upon the users thereof, a portion of which is as follows:

ADELE MILLAR

WONDER
PEEL PASTE

1-Day Home Treatment

Freckles, Pimples

for

Blackheads, Enlarged Pores, Wrinkles, Pits, Scars, Puffs, Acne condition of back and shoulders. Wonder Peel Paste gives new life and youth to aging faces

No failure, No redness afterwards, Price $5

* * * * * * *

Wonder Peel Paste draws impurities, freckles, wrinkles, and discolorations to the surface of the scarfskin, which in its turn peels off gently and painlessly, leaving the new skin underneath fresh, clear and soft as a child's.

* * * * * * *

Wonder Peel Paste gives new life and youth to aging faces. It will firm a relaxed condition of cheeks and throat, smooth out lines and wrinkles and reduce puffiness under the eyes. Invaluable in the treatment of Freckles, Acne Pimples, Wrinkles, Pits, Scars, Blackheads, discolorations and premature old skin of face and neck.

* * * * * * *

The greatest aid in face rejuvenation and in clearing a freckled and unclean skin.

* * * * * * *

Remove neck wrinkles and double chin with our sponge rubber face-lift contour mold.

PAR. 3. Through the use of advertisements currently appearing in newspapers, magazines, and other printed matter, respondent makes and has made many other unfair, false and misleading statements with reference to the alleged therapeutic value of said "Wonder Peel Paste" and its effect upon the users thereof, a portion of which is as follows:

* * * * * * *

Wonder Peel Paste $5.00

Modern aid in face rejuvenation. Prevent wrinkles, puffs, freckles, crepey neck. It is intelligence, not vanity to look your best.

* * * * * * *

The process of this treatment is one of normalized Tissues by Metabolic Control. The first part of the treatment withdraws toxins from the skin, and the second part accelerates the chemical Change in the living Skin Cells. This supplies Energy for vital Activities and New Materials to repair Waste Tissues.

PAR. 4. The statements and representations set forth in paragraphs 2 and 3 hereof, and others similar thereto, with respect to the nature

and effect of respondent's cosmetic preparation, when used, are grossly exaggerated, false, misleading and untrue. Such statements serve as representations on the part of respondent to purchasers and prospective purchasers of respondent's cosmetic preparation that said preparation, when used, is effective for withdrawing toxins from the skin, accelerating desirable chemical changes in the living skin cells and supplying energy for vital activities and new materials to repair waste tissues, and is effective for preventing or removing blemishes such as wrinkles, puffs, freckles, "crepey" neck, pimples, blackheads, scars, pits, so-called liver spots and acne.

PAR. 5. By reason of its underlying formula, respondent's said "Wonder Peel Paste" may act as a corrosive to the skin, but it is not efficacious in removing or preventing wrinkles, pimples, crepey neck, blackheads, scars, pits, so-called liver spots, acne on the back, face or shoulders, and it is not an efficacious treatment for flabby skin on neck and throat, hands and arms. Such surface blemishes generally are caused by or associated with a systemic, metabolic or other similar condition which is not local or external in character. When such blemishes are due to or are associated with such conditions, the external application of respondent's preparation will have no beneficial effect whatever on them. The formula for such preparation is not such that there is any absorption thereof through the outer layers of the epidermis so as to in any way remove or prevent the blemishes above referred to.

In truth and in fact respondent's said preparation does not possess such therapeutic properties as to constitute it a competent and efficacious treatment for the removal or prevention of the ailments hereinabove mentioned, nor is said preparation an effective treatment for the withdrawal of toxins from the skin. It does not accelerate desirable chemical changes in the living skin cells or have any beneficial effect therein. It does not supply energy for vital activities and new materials for the reparation of waste tissues and it has no therapeutic value for the correction of systemic disorders or for effecting a change in metabolism.

PAR. 6. There are among the competitors of respondent in commerce as herein described, distributors of preparations designed for similar usage, who truthfully advertise and represent the nature, merit, and therapeutic value of their respective preparations and who do not advertise and otherwise represent that such preparations have merit or therapeutic value which they do not have.

PAR. 7. Each and all of the false and misleading statements and representations used by the respondent herein through advertise-

ments in newspapers, magazines, and various other forms of printed matter, and in other ways, in offering for sale and selling the aforesaid cosmetic preparation known as "Wonder Peel Paste," were and are calculated to, and had and now have a tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that all of said representations are true, and that said preparation possesses substantial therapeutic value. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the statements and representations made by the respondent, as aforesaid, a number of the purchasing public purchases a substantial volume of said cosmetic preparation known as "Wonder Peel Paste," with the result that trade has been unfairly diverted from other individuals, partnerships, firms, and corporations likewise engaged in the sale of like and similar preparations for the treatment of skin ailments, or in the sales distribution of other products and preparations designed for treating the conditions and ailments herein discussed, who truthfully advertise their preparations. As a result thereof, substantial injury has been and is now being done by the respondent herein 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 herein have been, and are, all to the prejudice of the public and of respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 3, 1938, issued and served its complaint in this proceeding upon respondent, Adele Millar, now known as Adele Millar Prentiss, an individual doing business under the trade names Mme. Adele and Chez Adele, charging her 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 Reuben J. Martin, attorney for the Commission, and in opposition to the allegations of the complaint by Laurenz J. Krueger, attorney for the respondent, before Charles P. Vicini, 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 evidence and brief of counsel for the Commission (respondent having filed no brief and 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. The respondent Adele Millar, now Adele Millar Prentiss, is an individual doing business under the trade names of Adele Millar Prentiss, Mme. Adele and Chez Adele, having her office and principal place of business at the El Cortez Hotel in the city of San Francisco, State of California. Respondent is now, and has been for more than 1 year last past, engaged in the business of the sale and distribution of a preparation designated "Wonder Peel Paste" which respondent recommends for the treatment of puffs, freckles, crepey neck, wrinkles, pimples, blackheads, acne, scars, pits, discolorations of the skin such as liver spots and other skin ailments. Respondent causes said preparation, when sold, to be transported from the State of California to the purchasers thereof at their respective points of location in various States of the United States other than in the State of California. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 2. In the course and conduct of her business as aforesaid the respondent is now, and has been at all times mentioned herein, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of preparations designed for similar usage in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of her business as aforesaid and in the furtherance of the sale of such preparation, respondent has caused various statements and representations relative to such preparation and its effectiveness in use to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the United States and in circulars, booklets and other printed matter distributed to prospective purchasers of such

preparation situated in various States of the United States. Among and typical of aforesaid statements and representations are the following:

WONDER PEEL PASTE $5

The Modern Aid in
FACE REJUVENATION
Blackheads, Wrinkles, Freckles,
Crowsfeet, Sallow Skin, Saggy
Neck. It is not Vanity but
intelligence to look your best.
CHEZ ADELE,
Dept. 2, 177 Post St.,
San Francisco.

WONDER PEEL PASTE $5

The Modern Aid in
FACE REJUVENATION
Prevent Wrinkles, Puffs, Freckles,
Crepey Neck. It is intelligence
not vanity to look your best
ADELE MILLAR
Dept. 2, 177 Post St.,
San Francisco.

WONDER PEEL PASTE

One day home treatment (means only one application)

$5. * * * The process of this treatment is one of normalizing Tissues by Metabolic Control. The first part of the treatment withdraws toxins from the skin, and the second part accelerates the chemical change in the living skin cells. This supplies energy for vital activities and new materials to repair waste tissues.

Wonder Peel Paste draws impurities, freckles, wrinkles, and discolorations to the surface of the scarfskin, which in its turn peels off gently and painlessly, leaving the new skin underneath fresh, clear and soft as a child's.

Wonder Peel Paste gives new life and youth to ageing faces. It will firm a relaxed condition of cheeks and throat, smooth out lines and wrinkles and reduce puffiness under the eyes. Invaluable in the treatment of freckles, acne, pimples, wrinkles, pits, scars, blackheads, discolorations and premature old skin of face and neck.

The greatest aid in face rejuvenation and in clearing a freckled and unclean skin.

Remove neck wrinkles and double chin with our sponge rubber face-lift contour mold.

The aforesaid statements by respondent, together with other statements of similar import or meaning not herein set out, serve as representations by respondent to prospective purchasers of "Wonder Peel Paste" that the use of such preparation is effective in withdrawing toxins from the skin, accelerating chemical changes in the living skin

cells and in supplying new materials to repair waste tissues, that the use of such preparation will prevent or remove blemishes such as wrinkles, puffs, freckles, crepey neck, pimples, blackheads, scars, pits, liver spots and acne, and that the use of such preparation normalizes tissues by metabolic control.

PAR. 4. "Wonder Peel Paste" is composed of the following ingredients:

Betanapthol	15 parts
Resorcin	10 parts
Prec. Sulphur	25 parts
White Petrol	25 parts
Green soap	25 parts

PAR. 5. The aforesaid statements and representations by the respondent used and disseminated in the manner aforesaid are false and misleading. In truth and in fact the use of such preparation is not effective for withdrawing toxins from the skin or for accelerating chemical changes in the living skin cells. The use of such preparation will not supply new materials to the skin to repair waste tissues. The use of such preparation will not prevent or remove freckles, liver spots, or wrinkles. The use of such preparation will not prevent blemishes on the skin such as pimples, blackheads, puffs, scars, pits, acne, or crepey neck. Such preparation will not remove or aid in the removal of blemishes on the skin such as pimples, blackheads, puffs, scars, pits, acne, or crepey neck when such blemishes are due to or persist because of a systemic disorder or condition. Such preparation will not prevent, remove or aid in the removal of any blemishes on the skin which are due to or persist because of a systemic or metabolic disorder or condition. The use of such preparation does not normalize the tissues by metabolic control. Such preparation does not have any beneficial effect on the metabolism of the tissues or on the nutrition of the tissues or of the skin.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said preparation because of such erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States has been diverted unfairly to the respondent from her said competitors who truthfully represent the effectiveness in use of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 answer of respondent, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent Adele Millar, now known as Adele Millar Prentiss, individually and trading as "Mme. Adele" and "Chez Adele," or under any other name or names, 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 cosmetic preparation now designated "Wonder Peel Paste," or any other preparation containing substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the name "Wonder Peel Paste" or under any other name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said preparation will withdraw toxins from the skin, accelerate chemical changes in the living skin cells, or supply materials to the skin to repair waste tissues.

2. Representing that the use of said preparation will prevent or remove freckles, liver spots, or wrinkles.

3. Representing that said preparation will prevent or remove or have any beneficial effect in aiding in the removal of, any blemishes or other conditions of the skin which are due to or persist because of a systemic or metabolic disorder or condition.

4. Representing that said preparation will prevent pimples, blackheads, puffs, scars, pits, acne, or crepey neck.

5. Representing that said preparation has any beneficial effect in aiding in the removal of pimples, blackheads, puffs, scars, pits, acne,

or crepey neck, unless such representation is limited to those conditions which are of a surface character only.

6. Representing that said preparation has any beneficial effect on the metabolism or nutrition of the tissues.

It is further ordered, That the respondent shall, within 60 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.

IN THE MATTER OF

GOLD MEDAL FARMS, INC., JOSEPH FROMM AND PAUL STEFFIN

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

Docket 3380. Complaint, Apr. 13, 1938—Decision, July 21, 1939

Where a New York corporation engaged in operating receiving stations and cooling plants in the New York milk shed, and in purchasing milk and cream at such stations and plants for transmission to the New York metropolitan milk market for pasteurization and bottling and delivery at wholesale and retail in New York City, and in operating, as thus engaged, among others owned and operated by it, one of the largest receiving stations in the State at Buskirk, where it bought milk and cream from some 650 farmers, as compared with average State station of about 100 patrons, for shipment as aforesaid to the city, and where, licensed by the State to import milk and cream therein from other States, it secured about two-thirds of its milk from farmers in Washington and Rensselaer Counties and one-third from Vermont dairy farmers, and, as thus engaged in the New York metropolitan milk market as above described, in competition with similarly situated milk dealers and distributors engaged in interstate commerce in sale and distribution of milk in area in question, and in direct and substantial competition in said trade and commerce with others engaged in purchase of fluid milk and cream in the 7-State area making up New York milk shed aforesaid and in sale and distribution, as above described, of said products in said metropolitan market; and the general manager of said corporation, and the superintendent of its large receiving station above referred to, and who controlled and directed its policies and practices in relation to the milk and cream producing patrons in the area which supplied milk and cream to said States;

In opposing efforts to get farmers throughout the New York milk shed to form and maintain local cooperatives to join a producers' bargaining agency which was created to carry out provisions, policy, and purpose of State law with respect to sale of milk in New York milk shed, and was followed by organization of bargaining agency by dealers and distributors in the New York metropolitan milk market to carry out said law's provisions and bargain collectively with said producer agency as to price to be paid producers by dealers or distributors, and creation, organization, and functioning of which two agencies, more particularly, respectively included—

I. Creation of a corporation which (1) was organized under the State's Cooperative Corporations law as the Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., (2) had as one of its primary objectives action as a milk producers' bargaining agency with all the functions, powers, and duties expressed or implied in or under the provisions of said Rogers-Allen law, passed to encourage federation of cooperative associations of milk producers for united action in collective bargaining for the sale of their milk, in harmony with the considered conclusion of State and Federal agencies that through producer cooperative associations, controlled

exclusively by dairy-farmer members thereof, was to be found the most effective means of stabilizing dairy industry in said New York milk shed so as to secure adequate and proper supply of milk for people in said metropolitan milk market and assure fair return to producers of milk in said shed, and in harmony with the policy of the Federal and State Governments of fostering and encouraging formation of producer-controlled cooperatives, and which law necessitated formation of producer cooperatives in State in which producers of milk and cream lived in order for them to take advantage of said law, (3) bargained as to price of milk and cream on behalf of its member cooperative associations of local producers in said milk shed, (4) was the only dairy farmers' bargaining agency created under laws of said State whereby more than 1 producers' cooperative might join with other such cooperatives in bargaining jointly for price to be paid to producer by dealer for milk for said New York metropolitan milk market, and with which cooperative producers' agency (5) there were affiliated about 48,000 of the approximately 62,500 producers in said New York milk shed, through 90 cooperative associations operated locally in New York and other States comprising said shed, and which, (6) following its creation, sent representatives throughout said shed to acquaint producers with said State's Rogers-Allen law, and to aid them in forming local producers' cooperatives to take advantage thereof, and did so aid, when desired, and usually with assistance of State representative; and

II. Creation of a corporation organized by the milk dealers and distributors in the New York metropolitan milk market as the Metropolitan Milk Distributors' Bargaining Agency, to carry out provisions of said State Rogers-Allen law and to bargain collectively with said Producers' Agency through meeting and agreeing upon prices to be paid by dealers or distributors to the producers, and membership of which, numbering, at one time, from 42 to 46 dealers or distributors who purchased from 65 to 70 percent of all milk bought in said shed, had dropped to 4, due to failure of milk producers to organize into cooperative which would join the Producers' Agency, and opportunity to buy milk from nonmember and unorganized milk producers, as opposed to situation prevailing in event of all producers in said milk shed becoming affiliated with such Producers' Agency—

(*a*) Made false and disparaging statements concerning said Producers' Agency, its members, its objectives, and the character of its representatives, at meetings of representatives of said Producers' Agency and State Department of Agriculture, in furtherance of their joint efforts and to form first cooperative ever proposed among producers selling their milk to said corporation at its aforesaid receiving station, and put producers involved, who supplied said corporation, in fear of losing it as a market for their milk if they formed such cooperative, and represented, at said meetings, at which they did their utmost to prevent such producers from forming producer-controlled cooperative association, that said Producers' Agency was an instrument of and dominated by the dairymen's league, cooperative member thereof, and that said league's certificates of indebtedness were worthless, facts being said Producers' Agency's bylaws were designed to and did prevent control by the League or any other large cooperative, provisions of such bylaws were enforced, and certificates referred to were not worthless, but, on the other hand, of substantial value and readily marketable; and

(*b*) Repeated, at meetings called by them and at other times and places, to producers who sold to said corporation, the same arguments and misrepresentations employed by them to prevent formation of producer cooperative as hereinabove described, and made use of their barn inspector employee, who passed upon fitness of producers' barns and equipment to determine whether or not they were in proper condition to supply milk for said metropolitan market, to solicit producers whose barns he inspected to join a cooperative which they had induced and caused their said New York and Vermont producers to form shortly after first of said Producers' Agency's meetings above referred to, to sell milk directly to said corporation, and thereby, and through exaggerated promises to pay producers involved higher prices for their milk than prices secured by producers belonging to cooperative membership of said producer agency, and through misrepresenting methods to be used by the cooperative sponsored and promoted by them, as immediately above set forth, and through putting their producers in fear of losing their market through said corporation if they did not join said cooperative, induced and caused more than 400 of their patrons so to join;

With result that—

(1) Producer-controlled cooperative which was voted for by a large majority of the producers attending first Producers' Agency sponsored meeting for purpose of joining said Producers' Agency and bargaining through it for prices to be paid for the milk of its members, and in the adoption of which producer-controlled cooperative's bylaws about 100 of the patrons in question participated at second Producers' Agency sponsored meeting, failed, nevertheless, to function because of formation of said former local cooperative, formed at instance of said corporation and its said officers, and in organization, management, control, and operation of which milk producer members thereof apparently had little, if any, voice;

(2) Vermont and New York producers selling to said corporation were prevented from exercising their free and unimpeded choice in deciding whether or not to form producer cooperative association and sell through said Producers' Agency, and such producers were thereby deprived of the higher prices which would normally result from a single selling agency in control of all milk produced in the New York milk shed, and entering the New York metropolitan milk market, and of giving said corporation a competitive advantage over competitive dealers who do not unfairly interfere with their producers and prevent them from joining producer-controlled cooperative associations and becoming affiliated with and selling their products through said Producers' Agency; and

(3) Opposition arose from other dealers similar to that involved in practices above set forth, and following initiation of such opposition by said corporation and its said officers, and including threats to discontinue purchasing milk from farmers taking part in meetings to form local cooperatives to join said Producers' Agency, 15 contemplated cooperatives failed to perfect their organization, 10 that were formed and joined said Producers' Agency later withdrew their membership, and 10 local cooperatives were formed to sell their milk direct to dealers instead of through said Agency, and said Producers' Agency's attempts to get all dealers to pay prices bargained for by it were frustrated; and

With capacity and tendency, through said acts and practices of said corporation and its said officers, and through similar acts and practices on the part of other dealers in said New York milk shed, to encourage unfair competition among such dealers and to reduce prices paid by them to their producers for milk below cost of production, and thus to threaten quality and quantity of milk deemed suitable for consumption in said New York metropolitan milk market; to the injury of said market's consuming public:

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

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

Mr. Fletcher G. Cohn for the Commission.

Mr. Willard R. Pratt, of Utica, N. Y., and *Mr. Harold S. Fleischer*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Gold Medal Farms, Inc., a corporation, and Joseph Fromm and Paul Steffin, individuals, herein after referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gold Medal Farms, 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 1157 East One Hundred fifty-sixth Street, in the city of New York, N. Y.

Respondent Joseph Fromm is general manager of the respondent Gold Medal Farms, Inc., and he controls and directs its practices and policies.

Respondent Paul Steffin is manager of the country receiving plant operated by the respondent Gold Medal Farms, Inc., at Buskirk, N. Y., and, under the supervision of respondent Joseph Fromm, he controls and directs the operation of said plant and the practices and policies of the respondent Gold Medal Farms, Inc., in its relations with farmer producers of dairy products located in the vicinity of Buskirk, N. Y.

PAR. 2. Respondent Gold Medal Farms, Inc. is now and for several years has engaged in purchasing milk from dairy farmers in the States of New York and Vermont, transporting it to New York City, where it is pasteurized, bottled, and sold to both the wholesale and

retail trade. It operates the aforementioned country receiving plant at Buskirk, N. Y., where the milk is assembled, cooled and loaded into trucks for transportation to the pasteurizing plant of the respondent Gold Medal Farms, Inc., in New York City.

At the aforementioned plant of respondent, Gold Medal Farms, Inc., located at Buskirk, N. Y., the said respondent is supplied with milk by approximately 650 farmer producers, including approximately 85 such farmer producers located in the State of Vermont.

PAR. 3. Respondent, Gold Medal Farms, Inc., sells and distributes milk to wholesalers and retailers located in the area commonly referred to as the New York metropolitan milk market, which is situated partly in the State of New York and partly in the State of New Jersey, including New York City, the counties of Nassau, Suffolk, Rockland, and parts of Westchester County in New York State, Hudson County and parts of Bergen, Essex, Middlesex, Monmouth, Passaic, Somerset, and Union Counties in New Jersey. The area occupied by said New York metropolitan milk market is the most densely populated urban area in the United States. The daily fluid milk requirement for the inhabitants of said area is in excess of 4,000,000 quarts of whole milk, plus approximately 2,000,000 quarts in the form of cream. Said New York metropolitan milk market, since no substantial amount of milk is produced within the confines of said market, is dependent upon milk producers located in what is commonly referred to as the New York milk shed for a supply of fresh, fluid milk; said New York milk shed extends roughly 500 miles to the west and north and includes the whole of the State of New York and parts of the States of Vermont, Massachusetts, Connecticut, Pennsylvania, New Jersey, and Maryland. Anything which hampers the continuous movement of milk from the New York milk shed to the metropolitan market affects the well being of the inhabitants of said market.

More than 40 percent of the total fluid milk consumed in the New York metropolitan milk market is produced in States other than the States of New York and New Jersey, and approximately 70 percent of all of the milk consumed in the New York metropolitan milk market moves in interstate commerce.

PAR. 4. Fluid milk sold and consumed in the New York metropolitan milk market originates on dairy farms located in rural sections of the States comprising the New York milk shed. The milk is purchased from operators of these dairy farms, or their representatives, by so-called dealers who operate receiving stations and cooling plants at various points in the New York milk shed, where the milk is gathered, cooled, or processed, and prepared for ship-

ment to plants operated by said dealers located in the area covered by the New York metropolitan milk market, where said milk is processed or treated and placed in containers for delivery to wholesale, retail and ultimate consumer purchasers.

PAR. 5. Respondent Gold Medal Farms, Inc., in the course and conduct of its said business, as aforesaid, is in direct and substantial competition in said trade and commerce between, among, in and with the several States of the United States, with other corporations, and with firms, partnerships and individuals engaged in the purchase of fluid milk in the New York milk shed and in the sale and distribution thereof in the New York metropolitan milk market, as hereinabove described.

PAR. 6. The Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., hereinafter referred to as the "Agency" was incorporated on June 15, 1937, under the provisions of article 4 of the Cooperative Corporations Law of the State of New York, with its principal office in the city of Syracuse, N. Y. One of its primary objects is to act as a milk producers bargaining agency, with all of the functions, powers, and duties, expressed or implied in or under the provisions of chapter 383 of the New York Laws of 1937. (The Rogers-Allen Act). This bargaining agency has approximately 95 constituent cooperative association members in the various states comprising the New York milk shed, representing some 52,000 milk producers, out of a total of approximately 69,000 farmer producers in said shed qualified to supply milk to the New York metropolitan milk market. Since its organization, the agency, in the exercise of the functions vested in it by law, has acted as a bargaining agency for the dairy farmer producers, who, through membership in one of the dairy farmers' cooperative associations which are members of the Agency, are served by it. The said Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., is the only dairy farmers' bargaining agency created under the provisions of the said New York State Law, which serves the dairy farmers who produce the milk supplying said New York metropolitan milk market.

A large percentage of the milk dealers and distributors supplying the New York metropolitan milk market are cooperating with the Agency, having under the provisions of the existing law organized themselves into a dealers' bargaining agency known as the New York Metropolitan Milk Distributors' Bargaining Agency, hereinafter referred to as the "Dealers' Agency."

PAR. 7. Various milk distributors or dealers in the New York milk shed, among whom is respondent Gold Medal Farms, Inc., have committed or caused to be committed acts which seriously impair the

effective operation of the Agency and which threaten its very existence. These acts were done at various times and places, in many instances simultaneously, and included different forms of activities directed against the Agency in an effort to destroy same; among which, were efforts by corporations, partnerships, and individuals to coerce, intimidate and threaten, in devious and sundry ways, dairy farmers throughout the New York milk shed in order to cause such dairy farmers to refrain from exercising their legal rights to form producer controlled cooperative associations, with the view to having such cooperative associations affiliate with the Agency.

In many instances, such activities resulted in the formation of dealer controlled producers associations, which the farmer producers, from whom said dealers purchased their supply of milk, were compelled to join through misstatements and coercive methods employed by the dealers.

PAR. 8. Among other things, respondent Gold Medal Farms, Inc., acting through respondents Joseph Fromm, Paul Steffin, and others, has engaged in the practices and acts hereinafter set out in an attempt to prevent the affiliation of the dairy farmers, from whom it purchases milk, with the Agency:

On or about July 9, 1937, at Buskirk, New York, representatives of the Agency met with certain of the dairy farmers in that vicinity who were selling and delivering milk to the respondent Gold Medal Farms, Inc. at its country receiving plant at Buskirk, N. Y., for the purpose of effecting the organization of said producers as a producer controlled cooperative and having the same become affiliated with the Agency.

Prior to July 9, 1937, the farmer producers located in the vicinity of Buskirk, N. Y., and selling and delivering milk to the respondent Gold Medal Farms, Inc. at that point had never organized a cooperative nor had any attempt ever been made by respondents Gold Medal Farms, Inc., Joseph Fromm, and Paul Steffin to form any type of cooperative.

At the organization meeting on or about July 9, 1937, respondent Gold Medal Farms, Inc., through its representatives and respondent Paul Steffin, made many false, disparaging, and scurrilous statements concerning the Agency, its members, its objectives, and the character of its representatives, in an attempt to prevent said farmer producers from forming a producer-controlled cooperative and becoming affiliated with the Agency. In spite of the acts of the respondents, as aforesaid, the farmer producers at said meeting voted to form a producers' cooperative to become affiliated with the Agency and effected a temporary organization, including

the election of temporary officers. Announcement was made at this meeting of plans for a meeting to be held at a later date to perfect a permanent organization, and become affiliated with the Agency.

Immediately following the adjournment of said meeting on or about July 9, 1937, the respondents, Gold Medal Farms, Inc., Joseph Fromm, Paul Steffin, and other representatives of the respondent Gold Medal Farms, Inc., initiated a campaign among the farmers from whom the respondent Gold Medal Farms, Inc., purchased milk at its Buskirk, N. Y. plant, including not only those farmers who produced milk in New York, but also some who produced milk in the State of Vermont and shipped said milk from the State of Vermont to the plant of respondent Gold Medal Farms, Inc. at Buskirk, N. Y., to dissuade them from perfecting the organization of a cooperative to become affiliated with the Agency and to persuade them to form a cooperative controlled and dominated by respondent Gold Medal Farms, Inc. As a result of this campaign, a meeting was held on or about July 12, 1937, at or near Buskirk, N. Y., which meeting was called by one John P. Weatherwax, a lawyer, acting in behalf of respondent Gold Medal Farms, Inc. During the campaign preliminary to said meeting and at the meeting itself, false, disparaging, and scurrilous statements were made concerning the Agency, its members, its objectives, and the character of its representatives, by respondents Joseph Fromm, Paul Steffin, and said John P. Weatherwax. The meeting was dominated and controlled by respondents Joseph Fromm, Paul Steffin, and others acting at the instance and behest of the respondent Gold Medal Farms, Inc., with the farmer producers having no voice whatsoever in the conduct of same. As a result of the false, disparaging, and scurrilous statements so made and used by the respondents and the manner in which said meeting was conducted by the representatives of the respondent Gold Medal Farms, Inc., certain farmer producers, in both New York and Vermont, selling and delivering milk to respondent Gold Medal Farms, Inc., at its Buskirk, N. Y. plant were induced to and did form a cooperative organization known as the Washington and Rensselaer Counties Producers Cooperative Association, Inc., and since its formation, this organization has been under the complete control of respondent Gold Medal Farms, Inc., acting through its representatives.

As a result of the above mentioned activities of the respondents, more than two thirds of the farmer producers in both New York and Vermont selling and delivering milk to the aforementioned Buskirk, N. Y. plant of respondent Gold Medal Farms, Inc., have now signed up to become members of said company controlled

cooperative association, and have designated that association as their sole agent for the sale of their collective milk production, and said cooperative has entered into a contract with respondent Gold Medal Farms, Inc., whereby said respondent purchases all the milk produced by the members of the cooperative. A majority of the farmer milk producers who join this company controlled cooperative did not do so voluntarily and of their own accord but because of coercion, intimidation, threats, and misrepresentations by respondents, their agents, and representatives, as aforesaid.

The aforementioned activities on the part of the respondents, their agents and representatives, have effectively prevented the formation of a producer controlled cooperative and the affiliation of said producers, through such cooperative, with the Agency.

PAR. 9. Dealers purchasing milk from producers affiliated with the Agency are compelled to and do bargain with the Agency, either directly or through the Dealers' Agency, as to the price to be paid producers for their milk and cannot bargain directly with the farmer producer or with the cooperative to which the producer belongs. The affiliation of the farmer producers in a given area with the Agency places them in a more advantageous position to bargain for the price of their milk, because of the collective bargaining power of the Agency. Milk dealers who are not members of the Dealers' Agency or who do not bargain with the Agency, but bargain directly with the farmer producer from whom they purchase milk, or with local producers' cooperatives, have a competitive advantage over dealers who have become members of the Dealers' Agency or who bargain directly with the Agency.

PAR. 10. The aforesaid acts, practices, and methods used by respondents in the course and conduct of the business of respondent Gold Medal Farms, Inc., in said commerce between, among, in and with the several States of the United States, have the tendency and capacity to and do mislead, intimidate, and coerce the farmer producers from whom the respondent Gold Medal Farms, Inc. purchases milk, and cause such farmer producers, because of such deception, coercion, and intimidation, to refrain from becoming affiliated with the Agency, and to continue to bargain directly with respondent Gold Medal Farms, Inc. As a result thereof, respondent Gold Medal Farms, Inc. has a competitive advantage over competitors in said commerce who do not use such acts, practices, and methods in the conduct of their said business, but who deal with the Agency rather than with farmer producers individually or company controlled cooperatives, which unfairly diverts substantial trade in said commerce to the respondent Gold Medal Farms, Inc. from

its said competitors to their injury and to the injury of the public.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of competitors of respondent, Gold Medal Farms, Inc., and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 13, 1938, issued and subsequently served its complaint in this proceeding upon respondents, Gold Medal Farms, Inc., a corporation, and Joseph Fromm and Paul Steffin, individuals charging them with the use of unfair methods of competition in commerce in violation of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Willard R. Pratt, and Harold S. Fleischer, attorneys for the respondents, before John W. Addison, an examiner for 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, and the oral argument of counsel, 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, Gold Medal Farms, Inc., is a corporation organized under the laws of the State of New York in 1932 and is now existing and doing business under and by virtue of the laws of said State, with its principal office and place of business located at 1157 East One Hundred and Fifty-sixth Street, New York, N. Y. It is engaged in the business of buying milk and cream at a receiving station (creamery) at Buskirk, N. Y., and of pasteurizing, bottling, selling, and delivering the same at wholesale and retail in the city of New York, N. Y. Its paid-in capital is about $230,000, and its officers and directors are Hyman and Solomon Bagdanowsky and Abraham and Philip Bagdan. Its New York plant has a capacity for pasteurizing

220,000 pounds of milk a day. Its receiving station at Buskirk, N. Y., is one of the largest in the State of New York. At this plant, it buys milk and cream from about 650 farmers. The average station in the State of New York has about 100 patrons. It receives at this plant, at the season's height, in excess of 5,000,000 pounds of milk a month, and from here daily ships to its pasteurizing plant in New York City about 970 cans of milk and 75 cans of cream. Respondent, Gold Medal Farms, Inc., also buys milk from other distributors of milk.

PAR. 2. Respondent, Gold Medal Farms, Inc., secures about two-thirds of all the milk received at its Buskirk station from farmers in Washington and Rensselaer Counties, N. Y., with the other one-third coming from 138 farmers with dairy farms in the State of Vermont.

PAR. 3. Respondent, Gold Medal Farms, Inc., sends its representatives into the State of Vermont to negotiate with Vermont milk producers for the delivery of their milk to its Buskirk station and also as to the prices to be paid for the milk of these Vermont producers. The milk and cream from Vermont are delivered in trucks to the Buskirk, N. Y., station; the truckmen are hired by and the handling charges borne by the Vermont farmers. These Vermont producers deal continuously with respondent, Gold Medal Farms, Inc., in the manner aforesaid, thus causing their milk to be delivered every day from their farms in Vermont to the purchaser thereof, respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station.

PAR. 4. Respondent, Joseph Fromm, is General Manager of respondent Gold Medal Farms, Inc., and respondent, Paul Steffin, is Superintendent of the Buskirk station. They control and direct respondent, Gold Medal Farms, Inc.'s policies and practices in its relation with the milk and cream producing patrons in the area which supplies milk and cream to the Buskirk station of respondent, Gold Medal Farms, Inc.

PAR. 5. The City of New York, Long Island, and several counties in the State of New Jersey, comprise the area usually referred to as the New York metropolitan milk market. This area is the most densely populated region in the United States, and its daily milk consumption is approximately 4,000,000 quarts of milk and 2,000,000 quarts of cream. The New York milk shed is the area which extends throughout the State of New York and takes in parts of the States of Pennsylvania, New Jersey, Vermont, Massachusetts, Connecticut, and Maryland, throughout the rural sections of which the milk and cream produced on the dairy farms is approved by the proper authorities for sale and distribution in the New York metropolitan milk market. The milk is purchased from operators of these dairy farms or their

representatives by so-called dealers or distributors, among whom is respondent, Gold Medal Farms, Inc., who operate receiving stations and cooling plants at various points through the New York milk shed. Here the milk is gathered, cooled and processed and prepared for shipment to plants operated by said dealers located in the New York metropolitan milk market, where said milk and cream are processed or treated and placed in containers for delivery to wholesale, retail and ultimate consumer purchasers. About 34 percent of the milk consumed in the New York metropolitan milk market comes from States other than New York, and about 47 percent of same crosses state lines in reaching the market.

PAR. 6. Respondent, Gold Medal Farms, Inc., applied for and received from the New York State Department of Health a permit to ship, transport or import milk and cream into the State of New York from other States of the United States. In the New York metropolitan milk market, which is supplied with milk from the New York milk shed, respondent, Gold Medal Farms, Inc., sells and distributes milk and cream in competition with similarly situated milk dealers and distributors, engaged in interstate commerce in the sale and distribution of milk in this area. Respondent, Gold Medal Farms, Inc., in the course and conduct of its said business, as aforesaid, is in direct and substantial competition in said trade in commerce between and among the several States of the United States, with other corporations, and with firms, partnerships, and individuals engaged in the purchase of fluid milk and cream in the New York milk shed and in the sale and distribution thereof in the New York metropolitan milk market, as hereinabove described.

PAR. 7. The production and distribution of milk in the State of New York is a paramount industry affecting in a large measure the health and welfare of the people of that State. Both the Government of the United States and of the State of New York, through various agencies, have made investigations and reports as to the best method of stabilizing the dairy industry in the New York milk shed, so as to secure an adequate and proper supply of milk for the people in the New York metropolitan milk market and to assure a fair return to the producers of said milk in the New York milk shed. Through these investigations and reports, it has been determined that this could be accomplished most effectively through producer cooperative associations, controlled exclusively by the dairy farmer members thereof. It is the policy of the Government of the United States and of the State of New York to foster and encourage the formation of producer-controlled cooperatives.

PAR. 8. In order to encourage a federation of cooperative associations of milk producers for united action in collective bargaining for the sale of their milk, the State of New York, in accordance with the reports of agencies of the Government of the United States and of the State of New York, in May 1937, passed the Rogers-Allen Law, which law in its original form was prepared by a conference of New York State farm organizations, which sponsored it in the Legislature of the State of New York. The Rogers-Allen Law declares its purpose, among others, to be to promote, foster, and encourage intelligent and orderly marketing of milk through producer-owned and controlled cooperative associations; it provides for separate bargaining agencies to be established by incorporated producers' associations, formed under the cooperative corporation laws of New York and other States in various production areas throughout the milk shed, and by distributors in various marketing areas.

PAR. 9. The Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., hereinafter referred to as the "Agency," was organized in June, 1937, under the New York Cooperative Corporations Law, with its principal office in the city of Syracuse, N. Y., with one of its primary objectives being to act as a milk producers' bargaining agency, with all of the functions, powers and duties expressed or implied in or under the provisions of the Rogers-Allen law, so as to enable the milk producers to take advantage of the opportunity that was given them under said law. It bargains as to the price of milk and cream on behalf of its member cooperative associations of local producers in the New York milk shed. In order for producers of milk and cream to take advantage of the Rogers-Allen law, they must form producer cooperative associations under the laws of the State in which they live, and there are such local cooperatives organized under the laws of the States of New York, Vermont, and Pennsylvania. The said Agency is the only dairy farmers' bargaining agency created under the laws of the State of New York, whereby more than one producers' cooperative may join with other such cooperatives in bargaining jointly for the price to be paid to the producer by the dealer for milk for the New York metropolitan milk market.

PAR. 10. In carrying out the provisions of the Rogers-Allen law, the milk dealers and distributors in the New York metropolitan milk market organized the Metropolitan Milk Distributors' Bargaining Agency, hereinafter referred to as the "Dealers' Agency," to bargain collectively with the Agency. Representatives of the two Agencies meet and agree upon the prices to be paid by the dealers or distributors to the producers.

PAR. 11. About 48,000 of the approximately 62,500 producers in the New York milk shed are affiliated with the Agency through 90 cooperative associations operated locally in New York and other states which comprise the New York milk shed. The number of affiliates has been as high as 50,000. From 42 to 46 dealers or distributors, who purchased from 65 to 70 percent of all milk bought in the New York milk shed, were members of the Dealers' Agency, but in June, 1938, this number had dropped to 4. This decrease in membership in the Dealers' Agency was due to the fact that it was possible for the dealers to buy milk from producers who were not members of the Agency; that is, from unorganized milk producers. This is related to the failure of milk producers to organize themselves into cooperatives, which in turn would join the Agency. If all the producers in the New York milk shed became affiliated with the Agency, distributors would be forced to deal with them by means of bargaining between the Agency and the Dealers' Agency.

PAR. 12. Immediately after the creation of the Agency, it sent representatives throughout the New York milk shed to acquaint the producers with the Rogers-Allen law and to aid them in forming local producers' cooperatives to take advantage of the provisions of this law. If, and when, a group of milk producers in a given area signified a desire to form such a cooperative, the Department of Agriculture and Markets of the State of New York, through its representative, who usually accompanied a representative of the Agency, then assisted the milk producers in perfecting their organization of a local producers' cooperative.

PAR. 13. The Agency, throughout the year following its formation, in its efforts to get farmers throughout the milk shed to form and maintain local cooperatives which could join the Agency, met with much opposition from dealers and their representatives. This opposition from dealers, other than respondent, Gold Medal Farms, Inc., arose after the initiation of the opposition by respondents described in paragraphs 14 and 15 below, but was similar to that of the respondents and included threats to discontinue purchasing milk from farmers taking part in meetings to form such local cooperatives. Fifteen contemplated cooperatives failed to perfect their organization, 10 that were formed and joined the Agency later withdrew their membership, 10 local cooperatives were formed to sell their milk direct to dealers instead of through the Agency. The Agency's attempts to get all dealers to pay the prices bargained for by it were frustrated.

PAR. 14. In furtherance of the joint efforts of the Agency and the Department of Agriculture and Markets of the State of New York,

representatives of both met with certain of the milk producers who delivered their milk to the Buskirk station of respondent, Gold Medal Farms, Inc., at Johnsonville and Eagle Bridge, N. Y., on July 9 and August 10, 1937, respectively, in an effort to form the first cooperative ever formed or proposed among the producers selling their milk to respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station. Respondents did their utmost to prevent such producers from forming a producer-controlled cooperative association to affiliate with or join the Agency at these two Agency sponsored meetings, which were held for the purpose of forming and perfecting such a cooperative. Respondents and their representatives consumed a greater part of the time of the meetings, harangued the producers with arguments against forming the cooperative, making false and disparaging statements concerning the Agency, its members, its objectives and the character of its representatives, and putting the producers of Gold Medal in fear of losing respondent, Gold Medal Farms, Inc., as a market for their milk if they formed such a cooperative. Among the representations which were made by the respondents and their representatives at these meetings, were statements that the Agency was an instrument of, and was dominated by, the dairymen's league, a cooperative which is a member of the Agency, and that said league's certificates of indebtedness were worthless; whereas, in truth and in fact, the Agency's bylaws are designed to, and do, prevent control by the league or any other large cooperative, and these provisions of the bylaws have been enforced. In truth and in fact, the league's certificates of indebtedness are not worthless but, on the other hand, are of substantial value and are readily marketable.

PAR. 15. Respondents further induced and caused the producers, located both in the States of Vermont and New York, all of whom sold their milk to respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station, to form, on July 12, 1937, at a meeting called by the representatives of respondent, Gold Medal Farms, Inc., the Washington and Rensselaer Counties' Producers' Cooperative Association, Inc., hereinafter referred to as the "Washington and Rensselaer Cooperative," through which they were to sell this milk directly to Gold Medal Farms, Inc. At meetings, called and dominated by the respondents, and at other times and places, respondents and their agents or representatives repeated to the producers selling to respondent, Gold Medal Farms, Inc., the same arguments and misrepresentations employed by them to prevent the formation of a cooperative heretofore mentioned in the preceding paragraph. The respondents, also, used the barn inspector of respondent, Gold Medal Farms, Inc., who passed upon the fitness of the producers' barns and

equipment to determine whether or not they were in proper condition to enable them to supply milk for the New York metropolitan milk market, to solicit the producers whose barns he inspected, to join this cooperative. The respondents further held out to such producers exaggerated promises to the effect that respondent, Gold Medal Farms, Inc., would pay them higher prices for their milk than the prices secured by producers who belonged to cooperatives which were members of the Agency. The respondents likewise misrepresented the methods to be used by the Washington and Rensselaer Cooperative in arriving at the prices to be paid by respondent, Gold Medal Farms, Inc., and as to the methods to be used in giving advance notices of these prices to members. Furthermore, respondents put the producers selling to respondent, Gold Medal Farms, Inc., at his Buskirk, N. Y., station, in fear of losing this market if they did not join this cooperative. Respondents, through these acts and practices, induced and caused more than 400 of their patrons to join the Washington and Rensselaer Cooperative. The result has been that, although the producers attending the first Agency sponsored meeting voted 34 to 4 to form a producer-controlled cooperative to join the Agency and bargain through it for prices to be paid for the milk of its members, and although about 100 of the patrons at the second Agency sponsored meeting participated in adopting by-laws for such a cooperative, and although this cooperative did join the Agency, nevertheless it has failed to function because of the formation, as aforesaid, of the Washington and Rensselaer Cooperative, which cooperative was formed at the instance of the respondents and in the organization, management, control and operation of which the milk producers who are members thereof apparently have had little, if any, voice.

PAR. 16. The acts and practices of respondents, as above found, have had, and do have, the tendency and capacity to, and did, and do, coerce, intimidate and deceive the Vermont and New York producers selling to respondent, Gold Medal Farms, Inc., and have prevented, and do prevent, them from exercising their free and unimpeded choice in deciding whether or not to form a producer-controlled cooperative association and sell through the Agency, thereby depriving such producers of the higher prices which would normally result from a single selling agency in control of all milk produced in the New York milk shed and entering the New York metropolitan milk market, and giving the respondent, Gold Medal Farms, Inc., a competitive advantage over competitive dealers who do not unfairly interfere with their producers and prevent them from joining pro-

ducer-controlled cooperative associations and becoming affiliated with and selling their products through the Agency.

These acts and practices of the respondent, Gold Medal Farms, Inc., and the other respondents, as hereinabove set out, and similar acts and practices on the part of other dealers in the New York milk shed subsequently thereto, had, and do have, the tendency and capacity to encourage unfair competition among such dealers and to reduce the prices paid by them to their producers for milk below the cost of production, and thus to threaten the quality and quantity of milk deemed suitable for consumption in the New York metropolitan milk market, with a resulting injury to the consuming public in said market.

CONCLUSION

The acts and practices of respondents, Gold Medal Farms, Inc., Joseph Fromm and Paul Steffin, as described above, 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 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 John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed therein, and oral arguments by Fletcher G. Cohn, counsel for the Commission, and by Harold S. Fleischer, 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 the Federal Trade Commission Act.

It is ordered, That respondent Gold Medal Farms, Inc., its successors or assigns, officers, representatives, agents, and employees, and respondents Joseph Fromm and Paul Steffin, acting individually or through or by means of respondent Gold Medal Farms, Inc., or through or by means of any other dealer or distributor of milk or milk products, or through or by means of any group, association or combination of dealers or distributors, or any other agency, in connection with the purchase, receipt, sale or distribution of milk in any form in interstate commerce or in the District of Columbia, do forthwith cease and desist from doing directly or indirectly the following acts and things:

1. Deceiving, coercing or intimidating in any manner or by any means or method, any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, for the purpose, or with the intent, or with the result, of preventing said producer or producers from assisting in organizing, or from forming, joining, or becoming a member of, or affiliated with, any milk producers' cooperative association.

2. Deceiving, coercing, or intimidating, in any manner or by any means or method, any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever for the purpose, or with the intent, or with the result, of causing said producer or producers to assist in organizing, or in forming, joining, or becoming a member of or affiliated with, any milk producers' cooperative association.

3. Threatening reprisals in any manner or form against any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, as a penalty for, or as a result of, any attempt by said producer or producers to assist in organizing or forming any milk producers' cooperative association, or, as a penalty for, or as a result of, any such producer or producers joining or becoming a member of, or affiliated with, any such association, or as a penalty for, or as a result of, the failure of any such producer or producers to assist in organizing, or forming any such association, or as a penalty for, or as a result of, his or their failing to join or failing to become a member of, or failing to become affiliated with, any such association.

4. Interfering by means of deception, coercion, or intimidation, in any manner or form, with the free and unimpeded exercise of choice by any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, in the determination by said producer or producers as to whether said producer or producers shall or should form, organize, join, or become affiliated with any producers' cooperative association.

5. Interfering by means of deception, coercion, or intimidation, in any form or manner, with the free and unimpeded exercise of choice by any milk producers' cooperative association in its determination of whether or not such milk producers' cooperative association shall or should join or become affiliated, in any manner or form, with the Metropolitan Cooperative Producers' Bargaining Agency, Inc., or any milk producers' cooperative bargaining organization or agency, authorized by law.

6. Making, or causing to be made, in any form or manner, any falsely disparaging words or statements concerning or referring to the Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., or any milk producers' cooperative bargaining organization or agency, authorized by law, its purposes, objectives, its members, or the character of its representatives or membership.

7. Controlling, dominating, interfering, or attempting to control, dominate, or interfere with, in any form, manner, or method whatsoever, the organization, management, control, or operation of the Washington and Rensselaer Counties Producers' Cooperative Association, Inc., or any other milk producers' cooperative association or agency, authorized by law, with the purpose, intent, or result of preventing the producer members, officers, or directors of such a cooperative, from exercising their free and unimpeded judgment as to its organization, management, control, or operation.

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 form and manner in which they have complied with this order.

Commissioner Davis dissenting.

IN THE MATTER OF

PHILADELPHIA RUBBER WASTE 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 3010. Complaint, Dec. 5, 1936—Decision, July 26, 1939

Where a corporation had long engaged in manufacture and sale of storage batteries, dry batteries, radios, radio tubes, motor generator sets, distributors, spark-plug suppressors, intercommunicating devices, and electric clocks, for use, chiefly, in automobiles, under its registered trade name Philco, and had registered said name as trade-mark in various States and in foreign countries and spent many millions of dollars in advertising its said products under said name and mark, and said products, as thus advertised by it and by advertisements placed by its dealers, had come to be well and favorably known to purchasing public, and said name Philco was understood by many buyers as meaning that any product offered for sale thereunder for use in or on automobile was product of said corporation, and it featured colors blue and yellow in its advertising and packed and marketed its radio tubes in blue and yellow cartons, and constantly litigated to prevent use of name Philco by others; and thereafter a corporation and individual, owner of 94 percent of stock thereof prior to its dissolution, engaged in manufacture, sale and distribution of repair parts and automobile tires and tubes including tube repair kits, tire patches and reliner, patch cement and gasket cement, and three individuals, engaged as partners in sale and distribution of such products which they purchased from said corporation and, thereafter, from said individual—

Made use of such trade names as Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply and others including term Philco and sold their said products, purchased as aforesaid from said individual, with brand or label Philco thereon and thus sold inner tubes and spark plugs also dealt in and made use of labels on tube repair kits which were yellow with printed matter on blue background, and, described as "True Blue" said kits and made use of said colors for spark plug containers, displaying, as aforesaid word Philco, and featured in their catalogues, at top and bottom of pages, in conspicuous type such slogans as "Philco Guarantees You Satisfaction," "Philco Gives You Highest Quality at Lowest Prices," "Philco Products Mean Repeat Business and Greater Profits" and others of similar tenor, and represented thereby that said various products were made by said corporation or licensees, successors, or assignees thereof,

Notwithstanding fact that said automobile tube repair kits, reliners, patches and other products thus designated, etc., were not made by said corporation first referred to or concern through which said corporation sold, under trade name Philco, its said products for resale to general public, and said individuals and partners formed no part of and had no connection with said corporation or concern, which did not manufacture, sell or distribute said repair kits, patches and other products sold and distributed by said individuals and partners;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true and into purchase of products of said individuals and partners because of such erroneous and mistaken belief and with result of thereby diverting trade unfairly to them from said corporation and from their other competitors who do not misrepresent the manufacturer or manufacturers of their respective products;

Held, that such acts and practices of said individuals as above set forth were all to the prejudice and injury 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. Malvin H. Reinheimer, of Philadelphia, Pa., for Albert Schwartz.

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 Philadelphia Rubber Waste Co., a corporation, and Albert Schwartz, Isadore M. Engel, and Simon Sperberg, copartners, trading as Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply, Philco Auto & Rubber Supply, and Philco Spark Plug Co., 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, Philadelphia Rubber Waste Co., 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 located in the city of Philadelphia, in the State of Pennsylvania. Albert Schwartz, Isadore M. Engel, and Simon Sperberg are copartners, trading under the names and styles of Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply, Philco Auto & Rubber Supply, and Philco Spark Plug Co., with their principal place of business located in the city of Washington, in the District of Columbia. They also operate a branch office and place of business in the city of Richmond, in the State of Virginia.

Said respondent corporation is now, and has been for more than 1 year last past, engaged in the manufacture of tire patches, tire reliners, rubber patch cement, gasket cement, spark plugs, inner tubes, and tire repair kits, which it sells and distributes among various

states of the United States, under the trade name or designation of "Philco," upon which it uses the brand of "Philco Rubber Company, Philadelphia." Of the three copartners named, respondent Albert Schwartz has been and is now in charge of the respondent corporation's principal place of business in Philadelphia; respondent Isadore M. Engel is in charge of the said partnership's principal place of business in Washington, D. C., known as "Philco Rubber Company," which also displays upon its windows the words "Philco Rubber Sales Company, Washington"; respondent Simon Sperberg is in charge of the said partnership's branch office and place of business located in Richmond, Va. Said respondents' places of business in Washington, D. C., and Richmond, Va., do no manufacturing but sell and distribute products manufactured by respondent corporation, the said Philadelphia Rubber Waste Company, in its plant in Philadelphia, Pa., and labeled or branded with the name "Philco," as aforesaid, in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, said respondents, Philadelphia Rubber Waste Co., a corporation, and said Albert Schwartz, Isadore M. Engel and Simon Sperberg, were at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the 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. The Philadelphia Storage Battery Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its factory and principal place of business located in the city of Philadelphia, in the State of Pennsylvania. It is now and since 1919 has been engaged in the manufacture of radio and television receiving and broadcasting equipment, condensers, transformers, power units, converters, amplifiers, radio and telephone central control equipments, public address systems, storage batteries, electrolytes, testing apparatus, lubricating oils, furniture, and of a wide variety of automotive and other mechanical apparatus. It has for several years last past also been engaged in the sale and distribution of said products, in commerce, between and among various States of the United States and in the District of Columbia, through its subsidiary, Philco Radio and Television Corporation, under the trade name and designation of "Philco," causing said products, when sold, to be shipped from its place of business in the State of Pennsylvania to purchasers thereof located in States of the United States other than the State of Pennsylvania. Said company has built up and enjoys a valuable good

will in the word "Philco" as applied to its said products, particularly batteries, radios, and the various parts used in the assembling thereof in automobiles and other devices. Purchasers and prospective purchasers of automobiles and radios and accessories thereof as well as member of the respective trades dealing therein have, through long usage and over a long period of time, identified automotive and other mechanical apparatus and accessories which bear the name "Philco" as the products of the well and favorably known Philadelphia Storage Battery Co.

PAR. 3. In the course and conduct of their business as described in paragraph 1 hereof, and for the purpose of creating a demand on the part of the purchasing public for their products, the aforesaid respondents began at a date long subsequent to the adoption and use by said Philadelphia Storage Battery Co. of the word "Philco" as a trade name or designation for its products, to use the word "Philco" as a trade name or brand, and have continued to the present time to use the same in the manufacture, sale and distribution of their own products. They have caused and now cause said products to be marked and branded with the word "Philco." In catalogs and price lists used in soliciting the sale of and selling said products among customers and prospective customers in various States they have used and featured and now use and feature the word "Philco" as their trade name and as the brand name or designation for said products.

PAR. 4. The representations made by the respondents as set forth in paragraph 3 hereof and others similar thereto, are false, misleading and deceptive in that the products of respondents as thus advertised and branded have a tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers into the belief that the products so described and referred to were and are the products of the Philadelphia Storage Battery Co., when such was and is not the fact, to the injury of said Philadelphia Storage Battery Co. and other competitors, which said competitors have built up and have for many years enjoyed valuable good will, as aforesaid, in the manufacture, distribution and sale of their respective products among the purchasing public in various parts of the United States.

PAR. 5. There are, and have been for more than one year last past, among the competitors of respondent manufacturers and distributors likewise engaged in the business of manufacturing and selling in commerce, as herein set out, tire patches, tire reliners, rubber patch cement, gasket cement, spark plugs, inner tubes, tire repair kits, and similar products for use in automobiles who do not misrepresent said products and who do not deceive and mislead purchasers or prospective

purchasers of their products by simulating or using the word "Philco" as a trade name or brand or by simulating or using the trade name or brand of any other competitor, and who truthfully represent their products under their own trade names or brands.

PAR. 6. The use by respondents of said methods, acts and practices as above set forth, has had and now has the tendency and capacity to unfairly divert trade to respondents from their said competitors to the substantial injury of said Philadelphia Storage Battery Co. and those competitors selling the products of said Philadelphia Storage Battery Co. and other competitors, and also has the tendency and capacity to injure a substantial portion of the public by inducing purchasers and prospective purchasers to purchase their products manufactured and sold by respondents, as aforesaid, in and because of the erroneous belief that said products thus advertised under the trade name or brand "Philco" are the products of the Philadelphia Storage Battery Co., as aforesaid.

PAR. 7. The aforesaid methods, acts and practices of the respondents are all to the prejudice of the public and of the 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 the Federal Trade Commission Act, the Federal Trade Commission, on December 5, 1936, issued and served its complaint in this proceeding upon respondents, Philadelphia Rubber Waste Co., a corporation, and Albert Schwartz, Isadore M. Engel, and Simon Sperberg, copartners, trading as Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply, Philco Auto & Rubber Supply, and Philco Spark Plug Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answer thereto by respondent Albert Schwartz, on behalf of Philadelphia Rubber Waste Co., a corporation, and Albert Schwartz, trading as Philco Rubber Co., and Philco Rubber Sales Co., testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Malvin H. Reinheimer, attorney for the respondent Albert Schwartz, trading as Philco Rubber Co., before John W. Addison, 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 filed on behalf of respondent, Albert Schwartz, trading as Philco Rubber Co., testimony and other evidence, brief in support of the complaint and brief in opposition thereto filed on behalf of respondent Albert Schwartz, trading as Philco Rubber Co. (respondents Isadore M. Engel and Simon Sperberg, copartners, trading as Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply, Philco Auto & Rubber Supply, and Philco Spark Plug Co., not having filed a brief), and the oral arguments of counsel aforesaid (oral arguments not having been requested by or on behalf of respondents Isadore M. Engel and Simon Sperberg, copartners, trading as 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. Respondent Philadelphia Rubber Waste Co. was a corporation organized in August 1932, under and by virtue of the laws of the State of Delaware. Said corporation's principal place of business was located in Philadelphia, Pa. During the life of said corporation, the respondent Albert Schwartz owned 94 percent of the stock of said corporation. On December 29, 1936, which date was subsequent to the filing of the complaint herein, said corporation was dissolved. Thereafter, on January 21, 1937, the respondent Albert Schwartz registered the name Philadelphia Rubber Waste Co. under the Fictitious Names Act of the State of Pennsylvania, and as an individual has been, and is, doing business under that trade name. The business now carried on by respondent Albert Schwartz as an individual under said trade name and under the trade name Philco Rubber Co. is of the same character as that previously carried on by him through the respondent corporation, the Philadelphia Rubber Waste Co.

Respondents Albert Schwartz, Isadore M. Engel and Simon Sperberg are individuals trading as copartners under the names and styles of Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply, and Philco Rubber & Auto Supply (misnamed Philco Auto & Rubber Supply in the complaint), with their principal place of business at 311 H Street NE., in the city of Washington, D. C. They also operate a branch office and place of business at 504 Broad Street,

Richmond, Va. They secured, in June 1934, the registration of the term "Philco" as a trade-mark for tire and tube repair kits in the name of Philco Rubber Co. Isadore M. Engel for about 3 years, beginning in September 1934, traded as Philco Spark Plug Co. at 311 H Street NE., Washington, D. C. He applied in 1935 for registration in the United States Patent Office of the term "Philco" as a trade-mark for spark plugs, but the registration was denied in April 1937, in an uncontested opposition by Philadelphia Storage Battery Co.

Respondent Philadelphia Rubber Waste Co., a corporation was, and respondent Albert Schwartz, trading as Philco Rubber Co., has been, and is now, engaged in the business of manufacturing, selling and distributing in commerce among and between various States of the United States and in the District of Columbia repair parts for automobile tires and tubes, including tube repair kits, tire patches and reliners, patch cement and gasket cement, all of which are branded or labeled with the designation "Philco." Said corporate respondent and respondent Albert Schwartz caused and respondent Schwartz now causes said products, when sold by them, to be transported from their place of business in Philadelphia, Pennsylvania, to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents Albert Schwartz, Isadore M. Engel, and Simon Sperberg, copartners trading under the aforesaid trade names, purchase and have purchased said products branded or labelled with the designation "Philco" from respondent Albert Schwartz, (said respondents formerly purchasing said products from respondent Philadelphia Rubber Waste Co., a corporation) and cause and have caused said products, when resold by them, to be transported from their place of business in the District of Columbia to the purchasers thereof at their respective points of location in the States of Maryland, South and North Carolina, Florida, and in the District of Columbia. The said respondents trading as copartners also sell and distribute to the purchasers, situated as aforesaid, automobile inner tubes and spark plugs branded or labelled with the designation "Philco." In their catalog, in conspicuous type, at the top and bottom of pages, they display these slogans: "Philco Guarantees You Satisfaction"; "Philco Gives You Highest Quality at Lowest Prices"; "Philco Products Mean Repeat Business and Greater Profits"; "Let Philco Help You Meet Competition" and "Increase Your Profits With Philco Products." The labels used by respondents on said tube repair kits are yellow, with the printed matter appearing on a blue background, and

the kits are described as "True Blue." The containers for said spark plugs are also blue and yellow and carry a cross in yellow, on one part of which appears the word "Philco," and on the other the words "Spark Plugs," both printed in blue.

PAR. 2. In the course and conduct of their business, said Philadelphia Rubber Waste Co. was, and said individual respondents Albert Schwartz, Isadore M. Engel, and Simon Sperberg were at all times herein referred to, and still are, in competition with other corporations firms, partnerships, and individuals likewise 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. 3. The Philadelphia Storage Battery Co. is a corporation organized, existing, and doing business since 1906 under and by virtue of the laws of the State of Pennsylvania. It has a factory and principal place of business located at Ontario and C Streets in the city of Philadelphia, Pa. It makes or has made storage batteries, dry batteries, socket powers, radios, radio tubes, motor generator sets, vibrators, distributors, spark plug suppressors, intercommunicating devices, and electric clocks. Its radio receiving sets are for use some in homes and others in automobiles. Most of its other items are for use on automobiles only. It began making radio tubes and automobile radios in 1929 or 1930. Since 1919, it has, directly or indirectly, sold its products throughout the United States under the trade name "Philco," which it registered in the United States Patent Office as a trademark in 1920, for batteries, battery plates and battery plate separators; in 1923, for batteries and battery parts and supplies; in 1924, for electrolytes; in 1929, for radio receiving sets and radio speakers; and in 1930 for a long list of batteries and battery parts and supplies. It has also registered the name as a trademark in various States of the United States and in foreign countries. Its products have been handled in stores in every State of the Union since 1919, and have also been sold in foreign countries. Among the stores offering its products for sale at retail are: Radio stores, automobile accessories stores, department stores, tire stores, garages, jewelry stores, furniture stores, and hardware stores. Since 1918, it has spent more than 25 million dollars, advertising "Philco" products, and for the three years ending with 1937, spent over 3 million dollars a year in advertising them in full-page advertisements in The Saturday Evening Post, newspaper advertisements, billboard advertising and outdoor signs, window displays, store displays, and advertising direct by mail. Its own advertising is supplemented by advertisements placed by its

dealers. Its annual sales have risen from about 3.4 million dollars in 1919 to over 48 million dollars in 1937. The products are well and favorably known to the purchasing public and there are many buyers who understand that any product offered for sale under the name "Philco" for use in or on an automobile is the product of Philadelphia Storage Battery Co. Its radio tubes are packed and marketed in blue and yellow cartons, and it features these colors and a cross or grid in its advertising matter. It is constantly engaged in litigation to prevent use of the name "Philco" by other companies and has been successful in preventing its use in connection with the sale of razors and oil burners.

PAR. 4. The Philco Radio and Television Corporation is a Delaware corporation having its principal place of business at Tioga and C Streets, Philadelphia, Pa., and is engaged in selling and distributing in commerce, among and between the various States of the United States and in the District of Columbia, the products of the Philadelphia Storage Battery Co., under the trade name Philco, to individuals, and to business concerns, who in turn sell the same to the general public.

PAR. 5. The use by the respondents of the term "Philco" in their aforesaid trade names and the branding or labelling by respondents of their said automobile tube repair kits, reliners, patches, patch cement, gasket cement, inner tubes and spark plugs with the term "Philco" is a representation by respondents to the purchasing public that said products have been manufactured by the Philadelphia Storage Battery Co. and causes members of the purchasing public to have the erroneous and mistaken belief that said products have been manufactured by the Philadelphia Storage Battery Co.

PAR. 6. In truth and in fact, respondents do not form a part of or have any connection with the Philadelphia Storage Battery Co. or the Philco Radio & Television Corporation, which said corporations do not manufacture, sell, or distribute the said repair kits, patches, reliners, patch cement, gasket cement, inner tubes, or spark plugs which are sold and distributed by respondents.

PAR. 7. The use by the respondents of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, and did, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of respondents' said products because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the

various States of the United States and in the District of Columbia has been diverted unfairly to the respondents from the Philadelphia Storage Battery Co. and from their other competitors who do not misrepresent the manufacturer or manufacturers of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, 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 complaint of the Commission, the answer of respondent Albert Schwartz, on behalf of himself and respondent Philadelphia Rubber Waste Co., testimony and other evidence taken before John W. Addison, 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 Joseph C. Fehr, counsel for the Commission, and by Malvin H. Reinheimer, counsel for respondent, Albert Schwartz, 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 Philadelphia Rubber Waste Co., a corporation, its officers, representatives, agents, and employees, and respondents Albert Schwartz, Isadore M. Engel, and Simon Sperberg, individually and as copartners, trading as Philco Rubber Company, Philco Rubber Sales Co., Philco Auto Supply, Philco Rubber & Auto Supply, and Philco Spark Plug Co., or under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their various items of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by inference, through the use of the trade name "Philco" or any colorable simulation thereof, or in any other manner, that tire patches, tire reliners, tire and tube repair kits, repair patch cement, gasket cement, spark plugs, inner tubes, or any other merchandise manufactured by manufacturers other than the Philadelphia Storage Battery Co. or its licensees, successors or

assignees, are "Philco" products or are made by or under license from the Philadelphia Storage Battery Co.;

2. Using the term "Philco" or any other brand, corporate or trade name designed to have, or having, a tendency or capacity to deceive the purchasing public as to the identity of the manufacturer of the products sold by respondents.

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.

IN THE MATTER OF

WACO DRUG COMPANY

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

Docket 3468. Complaint, June 28, 1938.—Decision, Aug. 1, 1939

Where a corporation engaged in sale and distribution of "Omodyne" medicinal preparation; in advertising the same in newspapers, circulars and other periodicals distributed among the various States and through radio continuity broadcast from stations of extrastate audience—

(*a*) Represented that said preparation was a competent and effective cure or remedy for, and had substantial therapeutic value in treatment of, arthritis, neuritis, lumbago, sciatica, gout, neuralgia, and rheumatism, and that use thereof quickly relieved aches and pains caused by or associated with such ailments and conditions; and

(*b*) Represented that use thereof eliminated poisons from the system, and that such preparation was prepared and compounded according to a scientific method and formula;

Facts being it was not a remedy or cure for said various ailments, would not relieve poisons as above set forth, nor aches and pains caused by or associated with rheumatic conditions, it was not compounded or prepared in accordance with any scientific method or formula. but contained various drugs which were incompatible with others included therein, and such incompatible drugs thus included dissipated any therapeutic value which might otherwise be possessed by said drugs when used separately, each of which might cause toxic symptoms in users thereof, and it was not a competent or effective treatment for aforesaid ailments, and would not relieve user thereof of pains or aches caused by or associated with any of such conditions;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of its said product, and with result that trade in commerce was diverted unfairly to it from its competitors who truthfully represent the therapeutic value and effectiveness of their respective preparations:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. Reuben J. Martin, *Mr. Alden S. Bradley* and *Mr. M. C. Pearce* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Waco Drug Co.,

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, Waco Drug Co., is a corporation existing under the laws of the State of Oregon with its principal office and place of business at 406 Stock Exchange Building, Portland, Oreg. Respondent is now, and for several years last past has been, engaged in the sale of a certain liquid mixture known as "Omodyne" which is advertised and sold as an effective remedy and cure for arthritis, neuritis, sciatica, gout, all muscular aches and pains, related diseases and ailments.

Respondent causes said preparation, when sold, to be transported from its place of business in Oregon into and through the various States of the United States and the District of Columbia and has maintained, and now maintains, a constant current of trade in commerce in said commodity in and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business respondent has been, and now is, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution in commerce among and between the States of the United States and in the District of Columbia of preparations designed to cure and remedy the diseases and conditions for which the respondent recommends its said preparation.

PAR. 3. In the course and conduct of its business respondent has advertised said preparation by radio broadcasts and in newspapers, periodicals, and other publications circulated in and among the various States of the United States and the District of Columbia. In the course and conduct of its said business and for the purpose of inducing members of the public to purchase said preparation respondent in its advertisements of the same makes the following representations:

If you suffer from rheumatic pains in the form of arthritis, neuritis, sciatica, lumbago or gout your body also needs a sprucing up. To eliminate the toxic poisons and acids accumulated * * * get a bottle of Omodyne for quick relief. Omodyne is a specific rheumatic remedy. * * * The quick results will surprise you. Don't suffer unnecessary pains another day.

The Waco Drug Co., manufacturers of Omodyne, is gratified to inform its listeners of the continued success of its product, in the relief of rheumatic afflictions. * * * Omodyne has been so thoroughly tested over a long period of years that its manufacturers have no doubt as to the efficacy of this won-

derful remedy, and every day the proof is in the amazing relief it is giving the users of Omodyne. It is a great pleasure to the Waco Drug Co. to feel that they are doing their bit to relieve the great and constant sufferers that rheumatic ills entail and they wish they could see and talk personally with each and every one afflicted in this manner to the end that a fair trial at least would be given this tried and proven remedy.

* * * If you are suffering with arthritis, neuritis, lumbago, sciatica or any form of rheumatic aches or pains you owe it to yourself to do something about it. Give Omodyne a trial and you will be amazed at the results. Omodyne is not a prescription that can be prepared in the back room of a pharmacy in a few minutes. It is a product that takes time and scientific preparation and goes to its users efficient and pure and pleasant to take with medicinal properties that eliminate the poisons and acid that cause such untold suffering. Remember, Omodyne contains no alcohol, opiate, nor narcotic drug. Omodyne is a specific for rheumatic ills and nothing more and offers to its users the quickest and most economical home treatment available today. It is no longer necessary to suffer with disability, sleepless nights and pain, when immediate relief is at hand. No one should become reconciled to a condition that may lead to the permanent impairment of health. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid and other poisonous deposits from the body, which is the most common cause of all rheumatic ills. Omodyne further acts as an alterative, causing inflammation to subside and swelling to disappear, thus assisting nature to reestablish normal and healthy functions of the body. Omodyne quickly relieves pain without the use of any narcotic drug. Omodyne contains no alcohol or opiates.

Many other statements of like import and effect are made and used by the respondent.

PAR. 4. The preparation of respondent is not an effective remedy or cure for any of the diseases, ailments, and ills hereinbefore described, and does not have the remedial, curative, or therapeutic properties represented by the respondent. Such preparation is not manufactured or prepared by any special or scientific method, nor does the manufacture or preparation of the same require any special or scientific knowledge or equipment.

PAR. 5. Among the competitors of the respondent in said commerce, as herein set out, are many who sell and distribute preparations manufactured and prepared in a special or scientific manner which are designed to cure or remedy the diseases and ailments above described, and who do not in any way falsely represent the remedial, curative, or therapeutic properties of the same.

PAR. 6. Various members of the purchasing public have an active preference for those preparations designed to cure the diseases and ailments hereinabove described which are manufactured or prepared according to special or scientific methods.

PAR. 7. In truth and in fact the preparation Omodyne, as prepared and sold by the respondent, is not prepared according to any

special or scientific method, nor does it have the curative, remedial, or therapeutic properties claimed by the respondent.

PAR. 8. The aforesaid false and misleading statements and representations used by respondent in offering for sale, and selling, its preparation in commerce, as herein set out, have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous belief that such preparation has been manufactured or prepared according to a special or scientific method and has the remedial, curative, and therapeutic properties claimed by the respondent, and such members of the purchasing public, because of such erroneous belief, purchase a substantial volume of respondent's said preparation.

As a result thereof, trade in said commerce now is, and has been, unfairly diverted to respondent from competitors who do not, in the advertisement, sale, and distribution in said commerce of their respective products, make false claims about the manner of preparation of the same, or of the remedial, curative, or therapeutic properties thereof, to the injury of said competitors and to the injury of the public.

PAR. 9. The acts and practices of the respondent as hereinabove alleged are all to the prejudice of the public and the respondent's said competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 28, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Waco Drug Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Waco Drug Co., a corporation, filed no answer to the complaint.

After the issuance of said complaint, 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 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 complaint, testimony and other evidence and brief in support of the complaint (respondent not having filed brief 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, Waco Drug Co., is a corporation organized and existing under the laws of the State of Oregon and having its office and principal place of business in the Stock Exchange Building in the city of Portland, State of Oregon. Respondent for more than one year immediately prior to May 1, 1938, was engaged in the business of the sale and distribution of a medicinal preparation designated "Omodyne." Respondent caused said preparation when sold to be transported from its aforesaid place of business in the State of Oregon to purchasers thereof at their respective points of location in various States of the United States other than the State of Oregon. Respondent, at all times mentioned herein, maintained a course of trade in commerce in said preparation among and between various States of the United States.

PAR. 2. In the course and conduct of said business, respondent was, at all times mentioned herein, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of medicinal preparations designed and used for the treatment of the ailments and conditions of the human body for which respondent recommended the use of its said preparations as hereinafter described.

PAR. 3. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of said preparation the respondent caused various statements and representations relative to the therapeutic value of said preparation, to be inserted in advertisements in newspapers, circulars, and other publications having a circulation among and between various States of the United States, and in radio continuity broadcast from radio stations which had power to and did convey the programs emanating therefrom to listeners thereto situated in various States of the United States. Among and typical of the statements and representations by respondent, disseminated as aforesaid, are the following:

If you suffer from rheumatic pains in the form of arthritis, neuritis, sciatica, lumbago or gout, your body also needs a sprucing up. To eliminate the toxic poisons and acids accumulated * * * get a bottle of Omodyne for quick relief. Omodyne is a specific rheumatic remedy * * * The quick results will surprise you. Don't suffer unnecessary pains another day.

The Waco Drug Co., manufacturers of Omodyne is gratified to inform its listeners of the continued success of its product, in the relief of rheumatic afflictions. * * * Omodyne has been so thoroughly tested over a long period

of years that its manufacturers have no doubt as to the efficacy of this wonderful remedy, and every day the proof is in the amazing relief it is giving the users of Omodyne. It is a great pleasure to the Waco Drug Co., to feel that they are doing their bit to relieve the great and constant sufferers that rheumatic ills entail and they wish they could see and talk personally with each and every one afflicted in this manner to the end that a fair trial at least would be given this tried and proven remedy.

* * * If you are suffering with arthritis, neuritis, lumbago, sciatica or any form of rheumatism aches or pains you owe it to yourself to do something about it. Give Omodyne a trial and you will be amazed at the results. Omodyne is not a prescription that can be prepared in the back room of a pharmacy in a few minutes. It is a product that takes time and scientific preparation and goes to its users efficient and pure and pleasant to take with medicinal properties that eliminate the poisons and acid that cause such untold suffering. Remember, Omodyne contains no alcohol, opiate, nor narcotic drug. Omodyne is a specific for rheumatic ills and nothing more and offers to its users the quickest and most economical home treatment available today. It is no longer necessary to suffer with disability, sleepless nights and pain, when immediate relief is at hand. No one should become reconciled to a condition that may lead to the permanent impairment of health. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid and other poisonous deposits from the body, which is the most common cause of all rheumatic ills. Omodyne further acts as an alterative, causing inflammation to subside and swelling to disappear, thus assisting nature to reestablish normal and healthy functions of the body. Omodyne quickly relieves pain without the use of any narcotic drug, Omodyne contains no alcohol or opiates.

OMODYNE
Quick Relief For
Rheumatism
Arthritis
Neuritis
Sciatica
Neuralgia
Lumbago
Muscular and inflammatory
rheumatism.

Omodyne is a prescription which has been used for many years with marked success, in private, industrial and hospital treatment, for the several forms of rheumatism, including neuritis, arthritis, lumbago, gout, alcoholic neuritis, sciatica, muscular and inflammatory rheumatism or muscular aches and pains. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid, which is the most common cause of rheumatic condition. * * *

Waco Drug Company,
406 Stock Exchange Bldg.,
3rd and Yamhill,
Portland, Oregon.

PAR. 4. Through the use of the aforesaid advertisement and others of similar import or meaning not herein set out, respondent represented that its preparation "Omodyne" is a competent and effective cure or

remedy for, and has substantial therapeutic value in the treatment of arthritis, neuritis, lumbago, sciatica, gout, neuralgia, and rheumatism, and that the use of such preparation quickly relieves the aches and pains which are caused by or associated with such ailments and conditions; that the use of such preparation eliminates poisons from the human system; and that such preparation is prepared and compounded according to a scientific method and formula.

PAR. 5. The formula for each fluid ounce of the product "Omodyne" is as follows:

Strontium salicylate	25 grains
Formin	10 grains
Potassium iodide	6 grains
Colchicine	1/45 grain
Non-alcoholic, aromatic elixir, Aqua aa qs ad	fl. oz. 1.

PAR. 6. The aforesaid statements and representations by respondent relative to the therapeutic value of the preparation "Omodyne" are false and misleading. Said preparation is not a remedy or cure for arthritis, neuritis, lumbago, sciatica, gout, neuralgia, or rheumatism. The use of such preparation will not eliminate poisons from the human system or relieve the aches and pains which are caused by or associated with rheumatic conditions. Said preparation is not compounded or prepared in accordance with any scientific method or formula. Various drugs contained in said preparation are incompatible with other drugs contained therein. The preparation is an aqueous solution, and the drug colchicine deteriorates or decomposes in an aqueous solution. Salicylates cause the decomposition of colchicine. Potassium iodide is incompatible with colchicine, and salicylates are not generally prescribed with iodides. The compounding of said incompatible drugs in the preparation "Omodyne" dissipates any therapeutic value which may be possessed by said drugs when used separately. Each of the drugs contained in said preparation may cause toxic symptoms in the users thereof. The strontium salicylate is irritating to the mucosa of the stomach. The potassium iodide may be injurious to persons suffering from tuberculosis or goiter and colchicine is a deadly poison when taken in excessive amounts. Such preparation is not a competent or effective treatment for arthritis, neuritis, lumbago, sciatica, gout, neuralgia or rheumatism, and such preparation will not relieve the user thereof of the pains or aches which are caused by or associated with any of such conditions.

PAR. 7. The use by respondent of the aforesaid false and misleading statements and representations had the capacity and tendency to, and did, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said

false and misleading statements and representations were true, and into the purchase of respondent's said preparation. As a direct result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to respondent from its said competitors who truthfully represent the therapeutic value and the effectiveness in use of their respective preparations.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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, testimony and other evidence taken before Henry M. White, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed by counsel for the Commission (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That respondent, Waco Drug Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated "Omodyne" or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said preparation is a remedy or cure for, or an effective treatment for, arthritis, neuritis, lumbago, sciatica, gout, neuralgia, or rheumatism, or has any beneficial value in relieving the aches or pains which are due to or persist because of such conditions;

2. Representing that the use of said preparation will cause the elimination of poisons from the human system, or that said preparation is prepared in accordance with a scientific formula;

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

FRED ADELMANN, ALSO KNOWN AS FRANK ADELMANN, TRADING AS VIT-O-NET COMPANY, VIT-O-NET CORPORATION AND ELECTRIC BLANKET COMPANY

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

Docket 3533. Complaint, Sept. 21, 1938[1]*—Decision, Aug. 1, 1939*

Where an individual engaged in manufacturing, advertising, selling and distributing, under name "Vit-O-Net" and other names, an electrical device in the nature of a blanket; in advertising his said device in booklets, pamphlets, circulars, labels, and folders distributed among prospective purchasers, and in newspapers and magazines thus circulated, and in advertisements thereof which he thus disseminated in commerce and which were intended and likely to induce purchase thereof—

(*a*) Represented and implied that said device created and diffused so-called "electromagnetic energy" which was transmitted to the person within or under the protection thereof, leading to increased activity and revitalization of organs and cells of the body, charging the blood stream with such energy, and resulting in elimination of many times more poisons than was possible by any other method, and that resulting stimulation of the various cells of the body produced the cure of practically all the diseases which afflicted mankind, and that a large number of specified diseases, ailments and conditions, including blood pressure, rheumatism, arthritis, pneumonia, and numerous others, could be cured through use of said device, through correction of faulty elimination which he claimed to be responsible for said diseases, etc., facts being it did not create and diffuse so-called "electro-magnetic energy" which was transmitted as above set forth, or accomplish the other results claimed, use thereof did not cure said various diseases, ailments and conditions, and said device was not beneficial in treatment of any of them, except in those instances where direct application of heat over an extended area was beneficial;

(*b*) Represented that said device was created and manufactured for practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists, and was the result of painstaking and long experiments and tests, and was used, endorsed, and recommended by prominent and well-known physicians, scientists and other persons, and by hospitals, schools, and various other institutions, on the basis of extensive medical and scientific research by such persons and institutions, facts being it was not created and made for practical application of such discoveries and theories, as above set forth, or result of such experiments and tests, nor used, endorsed, or recommended by physicians, etc., as above claimed, and had not been tested or endorsed by such institutions and persons after such research;

[1] Amended.

(*c*) Represented that said device possessed therapeutic properties and values other than those resulting from heat produced thereby, facts being it possessed no such values or properties, other than as a producer of heat for direct application to extended areas of the body; and

(*d*) Represented that he maintained a health division under the supervision and direction of a physician, and operated a laboratory in connection therewith which gave medical advice to and made analyses for purchasers of said device, and that he rendered a medical service to such purchasers and their families as long as such purchasers owned such device, facts being he maintained no such health division, operated no laboratory, and gave no competent medical advice to and made no scientific analyses for said purchasers, and maintained no such medical service therefor, and rendered no health or laboratory service of any kind to purchasers of his said device;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and implications, and such false advertisements, were true, and that said device possessed curative and therapeutic values and properties claimed, and was used, recommended, and approved as above set forth, and was result of medical and scientific experiments enumerated, and that he maintained a health division under supervision and direction of a competent physician and a laboratory staffed by competent technicians for the dissemination of advice to and making analyses for purchasers of said device, and into buying such device as result of such erroneous and mistaken beliefs induced as above set forth:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices.

Before *Mr. Randolph Preston*, trial examiner.
Mr. William L. Taggart for the Commission.
Mr. Paul J. Donovan, of Chicago, Ill., for respondent.

Amended Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frank Adelmann, an individual, trading and doing business under the names of Vit-O-Net Co., Vit-O-Net Corporation, and Electric Blanket Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

Paragraph 1. The respondent, Frank Adelmann, is an individual, trading and doing business under the names of Vit-O-Net Co., Vit-O-Net Corporation, and Electric Blanket Co., who for more than a year last past has been, and is now, engaged in the business of manufacturing, distributing, and selling an electrical device from his place of

business at 1716 South Michigan Avenue, Chicago, Ill., to persons located in the various States of the United States and in the District of Columbia. The device is a so-called electric blanket through which are run, or into which are woven, copper wires connected to an attachment for plugging into an electric socket, which respondent refers to as "Vit-O-Net" and other names.

The respondent causes his device, when sold, to be transported from his said place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. He maintains a course of trade in said device so sold and distributed by him in commerce between the State of Illinois and various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing members of the public to purchase said device, respondent sends to, and disseminates among, prospective customers located at various points in many of the States of the United States and in the District of Columbia, letters, booklets, pamphlets, circulars, folders, and other forms of advertising matter wherein he describes said device, enumerates its claimed therapeutic value and makes many statements and representations regarding said device and its efficacy in the treatment and cure of various ailments, diseases, and conditions. Among, and typical of, said statements and representations so used and disseminated are the following:

Scientists have long realized that if a method could be found for stimulating the tiny living cells to throw off this waste—to arouse the waste channels to carry it out of the system more promptly—all body cells and tissues would be healthy and the largest part of human ills would be wiped out.

This end has been sought for centuries by drugs, by manipulation, by massage, by electric treatments of various sorts, all seeking the same end—to vibrate the tiny cells; to stimulate them to activity; to hasten elimination; then to encourage assimilation of new food supplies by live, healthy tissue.

Electricity has been the great hope of corrective therapeutics, particularly since radio has opened a new sphere of science in the study of the unquenchable waves of electro-magnetic force which travel the whole world around. At first, high-frequency machines were used, but their application was only local. Magnetism alone had the same limitations.

If only electrical energy, magnetism and a gentle heat could be made to reach all the tissues of the body at once, elimination would be general. So that wastes, removed from local spots, would not be dumped onto other organs to cause new troubles! Thousands have studied the problem.

During seventeen years of patient, at times painful and discouraging effort, in literally thousands upon thousands of tests, the Vit-O-Net has worked its slow but sure way to that goal.

Even after perfection was obtained in the laboratory and in the factory, it was determined that Vit-O-Net should not be marketed to the general public until

ample proof of its health-building properties had been established fully. For years it was sold principally to hospitals, physicians and sanitariums. These institutions have purchased blankets and used them regularly to relieve suffering and to save life.

Over 13,000 actual users by their grateful acknowledgment of recovery from all manner of "elimination diseases", attest the fact that Vit-O-Net not only has reached the solution of the problem, but has established its success by literally thousands of successful recoveries.

Vit-O-Net vibrates the cells! Gently, as though by thousands of invisible fingers!

Vit-O-Net stimulates cells and blood stream—every tiny particle of both! Vit-O-Net eliminates wastes! By arousing the human sewage system to action. Assimilation follows. Healthy cells, tissues, organs, bodies—all follow.

Vit-O-Net is not simply a heating and sweating device. Where the average heat treatment weakens, Vit-O-Net stimulates and increases energy. It has been notably successful with heart and anemia cases; also with aged people who cannot stand the weakening effect of ordinary heat treatments.

Under Faraday's Law, just as the wire loops in the dynamo pick up electric current, so the blood stream, moving through the magnetic field, becomes charged with tiny, minute currents of electricity. Although these minute electric currents are so small they scarcely are measurable, they are sufficient to stimulate the tiny cells of the body; a heavy current would have overwhelmed these tiny cells.

Movement of muscles in breathing or of the other organs of the body as they function, likewise charge them with electricity. Both the magnetic lines of force and the electrically charged blood stream reach every cell in the body—the cells in the very marrow of the bones just as readily as the cells of the skin. They stimulate each cell, the unit of life, to unload accumulation of waste directly into the blood stream and other waste channels. This explains why the Vit-O-Net produces results which cannot be obtained with any other form of treatment.

With the blood stream electrified and all the cells of the body receiving the electro-magnetic energy, and under their influences unloading waste into the proper channels, the cells become "hungry" for new nourishment, which is taken up eagerly; naturally each cell becomes sound and well. When all the cells in an organ or in a muscle are well, the organ or muscle is well; when all the organs and tissues are well, the body is well. There is no guesswork about it. Proof has been established in thousands of cases.

FAULTY ELIMINATION!

Blood Pressure	Bright's Disease
Rheumatism	Stomach Troubles
Arthritis	Dropsy
Neuritis	Catarrah
Sciatica	Goitre
Pneumonia	Constipation
Flu	Auto-Intoxication
Uremia	Eczema
Kidney Cases	Diabetes
Liver Disorders	Women's Ailments

Asthma	Obesity
Colds	Hay Fever
Acne and Pimples	Neurasthenia
Nervousness	Varicose Veins
Insomnia	Social Diseases
Paralysis	Heart Diseases

How is it possible that all these ailments are being relieved by the same treatment. The answer is simple; they have one common cause—Faulty Elimination.

IMPORTANT!

HEALTH SERVICE

Every purchaser of Vit-O-Net, who thus becomes a member of our Health Club, is entitled to *medical service* for himself and all members of his family, as long as he owns a Vit-O-Net. There is *no charge* for this service.

With each Vit-O-Net goes a Case History blank, which the purchaser is to fill out completely in his own words. There also is a container in which a sample for urinalysis may be sent our laboratories.

Our Health Division is under direction of a physician, an M. D., who also is a Master of Arts and a Fellow of the American Medical Association. He is anxious to work with your physician with only one object in view—*your health.*

Our laboratories are under direction of a nationally known technician. Advice, diets and analyses from our Health Division may be submitted to any recognized authority for verification.

This service is yours, *as long as you live!*

All of said statements, together with similar statements, appearing in respondent's advertising literature, purport to be descriptive of respondent's said device and of its effectiveness in use. By the means and in the manner aforesaid, respondent, directly and by inference, through the statements and representations herein set out, and other statements and representations of similar import and effect, represents and implies that said device creates and diffuses so-called "electromagnetic energy" which is transmitted to the person within or under the protection of said device, thereby causing an increased activity and revitalization of the organs and cells of the body, charging the blood stream with such energy, resulting in an elimination of many times more poisons than is possible by any other method, and that the resulting stimulation of the various cells of the human body produces a cure of practically all of the diseases, ailments and conditions which afflict mankind; that the following diseases, ailments and conditions can be cured through the use of said device because said device corrects faulty elimination, which respondent claims is responsible for said diseases, ailments and conditions: blood pressure, rheumatism, arthritis, neuritis, sciatica, pneumonia, flu, uremia, kidney cases, liver disorders, asthma, colds, acne and pimples, nervousness, insomnia, paralysis, Bright's disease, stomach troubles, dropsy, catarrh, goitre, constipation, auto-intoxication, eczema, diabetes, women's ailments,

obesity, hay fever, neurasthenia, varicose veins, social diseases, heart diseases; that said device is created and manufactured for practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and as the result of painstaking and long experiments and tests; that said device is used, endorsed and recommended by prominent and well-known physicians, scientists, and other persons and by hospitals, schools, and various other institutions, and that such endorsements and recommendations are based upon extensive medical and scientific research by such persons and institutions; and that said device possesses therapeutic properties and values other than those resulting from the heat produced by said device.

By the means and in the manner aforesaid, respondent represents that he maintains a health division, under the supervision and direction of a physician, operating a laboratory in connection therewith, which gives medical advice to, and makes analysis for, purchasers of said device; and that respondent renders a medical service to purchasers of said device and their families so long as said purchasers own said device.

In truth and in fact, respondent's said device does not create and diffuse so-called "electromagnetic energy" which is transmitted to the person within or under the protection of said device, thereby causing an increased activity and revitalization of the organs and cells of the body, and it does not charge the blood stream with such "energy" nor does it result in an elimination of many times more poisons from the system than is possible by any other method; and its use does not result in a stimulation of the various cells of the human body or produce a cure of practically all the diseases, ailments and conditions which afflict mankind. The use of said device will not cure blood pressure (high or low), rheumatism, arthritis, neuritis, sciatica, pneumonia, flu, uremia, kidney cases, liver disorders, asthma, colds, acne and pimples, nervousness, insomnia, paralysis, Bright's disease, stomach troubles, dropsy, catarrh, goitre, constipation, auto-intoxication, eczema, diabetes, women's ailments, obesity, hay fever, neurasthenia, varicose veins, social diseases, and heart diseases. Said device is not beneficial in the treatment of any of said diseases, ailments and conditions, except in such instances where the direct application of heat over an extended area is beneficial. Said device was not created and manufactured for practical application of the biological, chemical and other scientific discoveries and theories of well-known scientists and as the result of painstaking and long experiments and tests; and said device is not used, endorsed and recommended by prominent and well-known physicians, scientists and other prominent and well-

known persons, nor is it used by hospitals, schools and various other institutions and it has not been tested or endorsed by such institutions and such persons after extensive medical and scientific research. Said device does not possess any therapeutic values or properties other than as a producer of heat for direct application to extended areas of the body. Respondent's representations and claims as to the therapeutic value and usefulness of said device are false or grossly exaggerated and greatly exceed those which might truthfully be made for said device.

In truth and in fact, respondent does not maintain a health division, under the supervision and direction of a physician, and does not operate a laboratory in connection therewith, nor does he give competent medical advice to, or make scientific analysis for, purchasers of said device; nor does respondent maintain any medical service for purchasers of said device and their families so long as said purchasers own said device. In truth and in fact, respondent renders no health or laboratory service of any kind to purchasers of said device.

PAR. 3. The device offered for sale and sold by respondent as aforesaid is an instrument, apparatus, or contrivance intended for use in the cure, mitigation, treatment or prevention of disease in man and which is intended to affect the structure or some function of the body of man. The advertisements, containing the statements and the representations and implications hereinabove set out, constitute false advertisements in that such advertisements are misleading in material respects as hereinabove alleged, which are disseminated in commerce as aforesaid for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of said device.

PAR. 4. The use by the respondent of the aforesaid false, deceptive, and misleading statements, representations and implications with respect to said device, and the services rendered to purchasers thereof, and the dissemination of said false advertisements in commerce as aforesaid, 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 and mistaken belief that such statements, representations and implications, and said false advertisements, are true and that said device possesses the curative and therapeutic properties and values claimed and that it is used, recommended and approved by the persons and institutions named and is the result of the medical and scientific experiments enumerated; and that the respondent maintains a health division, under the supervision and direction of a competent physician, and a laboratory, staffed by competent technicians, for the dissemination of advice to, and the making of analysis

for, purchasers of said device, and into the purchase of respondent's said device as a result of such erroneous and mistaken beliefs induced by the aforesaid acts and practices of the respondent.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 21, 1938, issued, and on September 22, 1938, served, its amended complaint in this proceeding upon respondent, Fred Adelmann, also known as Frank Adelmann, an individual, trading as Vit-O-Net Co., Vit-O-Net Corporation, and Electric Blanket Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of the said amended complaint, certain testimony and other evidence in support of the allegations of the amended complaint were introduced by William L. Taggart, attorney for the Commission. In the course of hearings herein, respondent filed his answer to said complaint admitting all the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint, testimony, and evidence, and said answer, and the Commission having duly considered the matter, 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, Fred Adelmann, is an individual, trading and doing business under several names, principally Vit-O-Net Co., Vit-O-Net Corporation, and Electric Blanket Co., with his principal place of business at 1716 South Michigan Avenue in the city of Chicago, State of Illinois. The respondent is also known and does business as Frank Adelmann. Under one or the other of the trade names, respondent has been for some time past, and is now, engaged in the business of manufacturing, advertising, selling, and distributing an electrical device in the nature of a blanket which he calls Vit-O-Net and other names. The respondent causes said device to be transported from his place of business in the State of Illinois to

purchasers thereof in various States other than the State of Illinois and in the District of Columbia, and maintains, and for more than a year last past has maintained, a course of trade in commerce in such device so sold and distributed between the State of Illinois and the various other States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his business in said commerce, and for the purpose of inducing members of the public to purchase said device, respondent advertises said device in booklets, pamphlets, circulars, labels, and folders distributed among prospective purchasers and in newspapers and magazines circulated among said prospective purchasers. In said advertisements appear statements purporting to be descriptive of said device and its effectiveness and value for the uses and purposes for which it is advertised.

Among such statements are the following:

Scientists have long realized that if a method could be found for stimulating the tiny living cells to throw off this waste—to arouse the waste channels to carry it out of the system more promptly—all body cells and tissues would be healthy and the largest part of human ills would be wiped out.

This end has been sought for centuries by drugs, by manipulation, by massage, by electric treatments of various sorts, all seeking the same end—to vibrate the tiny cells; to stimulate them to activity; to hasten elimination; then to encourage assimilation of new food supplies by live, healthy tissue.

Electricity has been the great hope of corrective therapeutics, particularly since radio has opened a new sphere of science in the study of the unquenchable waves of electro-magnetic force which travel the whole world around. At first, high-frequency machines were used, but their application was only local. Magnetism alone has the same limitations.

If only electrical energy, magnetism and a gentle heat could be made to reach all the tissues of the body at once, elimination would be general. So that wastes, removed from local spots would not be dumped onto other organs to cause new troubles! Thousands have studied the problem.

During seventeen years of patient, at times painful and discouraging effort, in literally thousands upon thousands of tests, the Vit-O-Net has worked its slow but sure way to that goal.

Even after perfection was obtained in the laboratory and in the factory, it was determined that Vit-O-Net should not be marketed to the general public until ample proof of its health-building properties had been established fully. For years it was sold principally to hospitals, physicians and sanitariums. These institutions have purchased blankets and used them regularly to relieve suffering and to save life.

Over 13,000 actual users by their grateful acknowledgment of recovery from all manner of "elimination diseases" attest the fact that Vit-O-Net not only has reached the solution of the problem, but has established its success by literally thousands of successful recoveries.

Vit-O-Net vibrates the cells! Gently, as though by thousands of invisible fingers!

Vit-O-Net stimulates cells and blood stream—every tiny particle of both! Vit-O-Net eliminates wastes! By arousing the human sewage system to action. Assimilation follows. Healthy cells, tissues, organs, bodies—all follow.

Vit-O-Net is not simply a heating and sweating device. Where the average heat treatment weakens, Vit-O-Net stimulates and increases energy. It has been notably successful with heart and anemia cases; also with aged people who cannot stand the weakening effect of ordinary heat treatments.

Under Faraday's Law, just as the wire loops in the dynamo pick up electric current, so the blood stream, moving through the magnetic field, becomes charged with tiny, minute currents of electricity. Although these minute electric currents are so small they scarcely are measurable, they are sufficient to stimulate the tiny cells of the body; a heavy current would have overwhelmed these tiny cells.

Movement of muscles in breathing or of the other organs of the body as they function, likewise charge them with electricity. Both the magnetic lines of force and the electrically charged blood stream reach every cell in the body—the cells in the very marrow of the bones just as readily as the cells of the skin. They stimulate each cell, the unit of life, to unload accumulation of waste directly into the blood stream and other waste channels. This explains why the Vit-O-Net produces results which cannot be obtained with any other form of treatment.

With the blood stream electrified and all the cells of the body receiving the electro-magnetic energy, and under their influences unloading waste into the proper channels, the cells become "hungry" for new nourishment, which is taken up eagerly; naturally each cell becomes sound and well. When all the cells in an organ or in a muscle are well, the organ or muscle is well; when all the organs and tissues are well, the body is well. There is no guess-work about it. Proof has been established in thousands of cases.

FAULTY ELIMINATION

Blood Pressure	Bright's Disease
Rheumatism	Stomach Troubles
Arthritis	Dropsy
Neuritis	Catarrh
Sciatica	Goitre
Pneumonia	Constipation
Flu	Auto-Intoxication
Uremia	Eczema
Kidney Cases	Diabetes
Liver Disorders	Women's Ailments
Asthma	Obesity
Colds	Hay Fever
Acne and Pimples	Neurasthenia
Nervousness	Varicose Veins
Insomnia	Social Diseases
Paralysis	Heart Diseases

How is it possible that all these ailments are being relieved by the same treatment. The answer is simple; they have one common cause—Faulty Elimination.

IMPORTANT!

HEALTH SERVICE

Every purchaser of Vit-O-Net, who thus becomes a member of our Health Club, is entitled to *medical service* for himself and all members of his family, as long as he owns a Vit-O-Net. There is *no charge* for this service.

With each Vit-O-Net goes a Case History blank, which the purchaser is to fill out completely in his own words. There also is a container in which a sample for urinalysis may be sent our laboratories.

Our Health Division is under direction of a physician, an M. D., who also is a Master of Arts and a Fellow of the American Medical Association. He is anxious to work with your physician with only one object in view—*your health.*

Our laboratories are under direction of a nationally known technician. Advice, diets, and analyses from our Health Division may be submitted to any recognized authority for verification.

This service is yours, as long as you live!

All of said statements, together with similar statements, appearing in respondent's advertising literature, purport to be descriptive of respondent's said device and of its effectiveness in use. By the means and in the manner aforesaid, respondent, directly and by inference, through the statements and representations herein set out, and other statements and representations of similar import and effect, represents and implies that said device creates and diffuses so-called "electromagnetic energy" which is transmitted to the person within or under the protection of said device, thereby causing an increased activity and revitalization of the organs and cells of the body, charging the blood stream with such energy, resulting in an elimination of many times more poisons than is possible by any other method, and that the resulting stimulation of the various cells of the human body produces a cure of practically all of the diseases, ailments, and conditions which afflict mankind; that the following diseases, ailments, and conditions can be cured through the use of said device because said device corrects faulty elimination which respondent claims is responsible for said diseases, ailments, and conditions: Blood pressure, rheumatism, arthritis, neuritis, sciatica, pneumonia, flu, uremia, kidney cases, liver disorders, asthma, colds, acne and pimples, nervousness, insomnia, paralysis, Bright's disease, stomach troubles, dropsy, catarrh, goiter, constipation, autointoxication, eczema, diabetes, women's ailments, obesity, hay fever, neurasthenia, varicose veins, social diseases, heart diseases; that said device is created and manufactured for practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and as the result of painstaking and long experiments and tests; that said device is used, endorsed and recommended by prominent and well-known physicians, scientists and other persons and by hospitals, schools, and various other institutions,

and that such endorsements and recommendations are based upon extensive medical and scientific research by such persons and institutions; and that said device possesses therapeutic properties and values other than those resulting from the heat produced thereby.

By the means and in the manner aforesaid, respondent represents that he maintains a health division under the supervision and direction of a physician, operating a laboratory in connection therewith, which gives medical advice to, and makes analyses for, purchasers of said device; and that respondent renders a medical service to purchasers of said device and their families so long as said purchasers own said device.

In truth and in fact, respondent's said device does not create and diffuse so-called "electromagnetic energy" which is transmitted to the person within or under the protection of said device, thereby causing an increased activity and revitalization of the organs and cells of the body, and it does not charge the blood stream with such "energy" nor does it result in an elimination of many times more poisons from the system than is possible by any other method; and its use does not result in a stimulation of the various cells of the human body or produce a cure of practically all the diseases, ailments, and conditions which afflict mankind. The use of said device will not cure blood pressure (high or low), rheumatism, arthritis, neuritis, sciatica, pneumonia, flu, uremia, kidney cases, liver disorders, asthma, colds, acne and pimples, nervousness, insomnia, paralysis, Bright's disease, stomach troubles, dropsy, catarrh, goiter, constipation, autointoxication, eczema, diabetes, women's ailments, obesity, hay fever, neurasthenia, varicose veins, social diseases, and heart diseases. Said device is not beneficial in the treatment of any of said diseases, ailments and conditions, except in such instances where the direct application of heat over an extended area is beneficial. Said device was not created and manufactured for practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and as the result of painstaking and long experiments and tests; and said device is not used, endorsed, and recommended by prominent and well-known physicians, scientists, and other prominent and well-known persons, nor is it used by hospitals, schools and various other institutions and it has not been tested or endorsed by such institutions and such persons after extensive medical and scientific research. Said device does not possess any therapeutic values or properties other than as a producer of heat for direct application to extended areas of the body. Respondent's representations and claims as to the therapeutic value and usefulness of said device are false or grossly exaggerated and greatly exceed those which might truthfully be made for said device.

In truth and in fact, respondent does not maintain a health division, under the supervision and direction of a physician, and does not operate a laboratory in connection therewith, nor does he give competent medical advice to, or make scientific analyses for, purchasers of said device; nor does respondent maintain any medical service for purchasers of said device and their families so long as said purchasers own said device. In truth and in fact, respondent renders no health or laboratory service of any kind to purchasers of said device.

PAR. 3. The device offered for sale and sold by the respondent as aforesaid is an instrument, apparatus, or contrivance intended for use in the cure, mitigation, treatment, or prevention of disease in man and which is intended to affect the structure or some function of the body of man. The advertisements, containing the statements and the representations and implications hereinabove set out, constitute false advertisements in that such advertisements are misleading in material respects as hereinabove alleged, which are disseminated in commerce as aforesaid for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of said device.

PAR. 4. The use by the respondent of the aforesaid false, deceptive, and misleading statements, representations, and implications with respect to said device, and the services rendered to purchasers thereof, and the dissemination of said false advertisements in commerce as aforesaid, 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 and mistaken belief that such statements, representations, and implications, and said false advertisements, are true and that said device possesses the curative and therapeutic properties and values claimed and that it is used, recommended, and approved by the persons and institutions named and is the result of the medical and scientific experiments enumerated; and that the respondent maintains a health division, under the supervision and direction of a competent physician, and a laboratory, staffed by competent technicians, for the dissemination of advice to, and the making of analyses for, purchasers of said device, and into the purchase of respondent's said device, as a result of such erroneous and mistaken beliefs induced by the aforesaid acts and practices of the respondent.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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, testimony and other evidence taken before Randolph Preston, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the amended complaint, and the answer of the respondent, in which answer respondent admits all material allegations of fact set forth in the amended complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Fred Adelmann, also known as Frank Adelmann, an individual, whether trading under either of said names or as Vit-O-Net Co., Vit-O-Net Corporation, or Electric Blanket Co. or any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of an electrical device described and designated as a blanket which is now sold under the name "Vit-O-Net" and various other names, or any other device of similar design and construction or possessing similar properties, whether sold under the name "Vit-O-Net" or any other trade name; or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device or any device of similar construction or possessing similar properties, which advertisements represent, directly or through implication, that said device is created and manufactured for the practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and is the result of painstaking and long experiments and tests; that said device sets up a radiomagnetic energy which is transmitted to the person within or under its protection, thus causing an increased activity and revitalizing of the organs and cells of the body, a charging of the blood stream with electromagnetic energy, an elimination of many times more poisons and waste matter than is possible by any other method, and a magnetic stimulation of the

various cells of the human body with a resulting cure of any disease or ailment with which the person using the product may be suffering; that said device has been tested and endorsed by prominent and well-known physicians, scientists, or other prominent and well-known persons, or by hospitals and other institutions for medical and scientific research, when such are not the facts; that said device is an amazing discovery, aids nature to eliminate the wastes and poisons responsible for high or low blood pressure, rheumatism, arthritis, neuritis, sciatica, pneumonia, flu, uremia, kidney cases, liver disorders, asthma, colds, acne and pimples, nervousness, insomnia, paralysis, Bright's disease, stomach troubles, dropsy, catarrh, goitre, constipation, auto-intoxication, eczema, diabetes, women's ailments, obesity, hay fever, neurasthenia, varicose veins, social diseases, heart diseases; has therapeutic value in all diseases known to man and creates new energy, new vitality, and is wonderful for, and soothing to, the nerves; that said device produces radiomagnetic or electromagnetic energy which is transmitted to, and has an effect on, the human body, or that it has any curative, remedial, or therapeutic effect at all on the human body other than that which would be produced by, and as a consequence of, the heat generated by said device; and that purchasers of said device and their families, as long as they own said device, secure through a health division and laboratory, maintained under the supervision and direction of a competent physician, scientific analyses, and complete medical service.

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 this order.

IN THE MATTER OF

THE KNOX COMPANY

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

Docket 3597. Complaint, Sept. 19, 1938—Decision, Aug. 1, 1939

Where a corporation engaged in sale and distribution of "Cystex" and "Mendaco," proprietary preparations respectively advertised and sold as remedies for kidney and bladder disorders and for asthma; in advertisements which it disseminated in commerce through newspapers and periodicals of general circulation throughout the various States, and through continuities broadcast from radio stations of extrastate audience—

(*a*) Represented that said "Cystex" was an adequate remedy or cure for ailments, disorders and diseased conditions of the kidneys and bladder, irrespective of the cause or condition thereof, both through direct statements to that effect and indorsements attributed to various doctors; and

(*b*) Represented that the presence of symptoms, including swollen joints, leg and rhemuatic pains, backaches, nervousness, dizziness, circles under the eyes, excess acidity, or loss of energy, and others, were indicative of ailments or diseased conditions which could be successfully treated by use of said preparation;

Facts being ailments, disorders, and diseased conditions of the kidneys or bladder often arise from, are due to, or persist because of systemic or organic derangement of some character, said preparation, in such cases, does not constitute cure or remedy for such ailments and disorders and is not adequate or competent treatment therefor, nor for all nonorganic or nonsystemic cases due to such conditions, irrespective of cause, and various symptoms mentioned in its advertising as being indicative of kidney or bladder derangement may also be symptoms of conditions disassociated from said organs, and presence of such symptoms does not positively indicate derangement of kidney or bladder, and functional disorders of said organs may sometimes arise from organic disturbances, and said preparation is not cure or remedy or adequate treatment for such disorders; and

(*c*) Represented, as aforesaid, that said "Mendaco" was a cure or remedy or effective treatment for asthma, and permanently relieved symptoms thereof, such as choking, etc., and possessed therapeutic value in treatment of said ailment; and

(*d*) Represented that said "Mendaco" stimulated and refreshed the blood and promoted body metabolism;

Facts being said ailment is caused by sensitization to some foreign protein or other varying causes which may not be readily determined, effective and adequate treatment thereof necessitates determination of cause or causes of disorder, and direct treatment thereof, and said "Mendaco" does not constitute such remedy or cure or adequate or effective treatment for said condition, and does not permanently remove the symptoms thereof, or possess therapeutic value in excess of furnishing, in some cases, temporary relief from said symptoms, and does not purify, stimulate, refresh, or have any beneficial effect on blood, or promote body metabolism;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of its said products as result of such erroneous belief, and with effect of thereby diverting trade unfairly to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution of remedies and treatments for same ailments, disorders, and conditions of the body listed in its advertising, and who do not misrepresent the therapeutic values and qualities of their said products:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. James A. Taylor, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Knox Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 Knox Co., a corporation doing business under the laws of the State of Missouri, with its principal office and place of business located at 811 West Seventh Street, city of Los Angeles, State of California, is now and has been for more than 1 year last past engaged in the sale and distribution of a proprietary preparation called "Cystex," advertised and sold as a remedy for kidney and bladder disorders and a proprietary preparation called "Mendaco" advertised and sold as a remedy for asthma.

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparations, when sold by it, to be shipped from its said place of business in Los Angeles, Calif., to the purchasers thereof, located in the various States of the United States, other than the State of California, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary products so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business as aforesaid, respondent has been, and is now, in substantial competition with other corporations and with partnerships and individuals likewise engaged in the

sale and distribution in interstate commerce of like and similar products or other products and treatments intended, designed and used for similar purposes.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Cystex," respondent has caused false advertisements containing representations and claims with respect to the properties of said proprietary product, "Cystex," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

If functional disorders of the kidneys or bladder make you suffer from getting up nights, nervousness, leg pains, circles under eyes, dizziness, backache, swollen joints, excess acidity, or burning passages, don't rely on ordinary medicines, fight such troubles with the doctors prescription Cystex.

Dr. Goodall says: "More than 5 million men and women in all parts of the world have used Cystex for functional kidney disorders."

I shall quote from a letter recently received from the head of the Health Department of an important city: "I am happy to say that in my opinion Cystex is the best remedy for functional kidney ailments."

Dr. Walter R. George, former Health Commissioner of Indianapolis, U. S. A. says: "I unhesitatingly recommend Cystex to sufferers from functional kidney ailments."

Dr. Martin Grunschlag says: "In my opinion Cystex is one of the finest formulas which has come to my notice for the treatment of many common functional disorders of the kidneys."

A common cause of kidney ailments is germs which are developed in the body during colds, or by bad teeth or tonsils, or through bacterial diseases.

Dr. George B. Knight, physician, Camden, says: "Yet Cystex contains no harmful or injurious ingredients."

The doctors formula Cystex starts fighting kidney germs in 3 hours, checks pains, stimulates and tones the kidneys and bladder.

Cystex quickly combats germs in the kidneys.

Fight such germs with the Dr.'s prescription Cystex.

Dr. Goodall says: "Cystex acts in three ways to help combat these troubles. First, it fights the germs which may cause the kidneys to function poorly, second it soothes and tones kidneys, * * *"

Dr. C. Van Straubenzee, a noted European physician wrote: "I consider Cystex one of the most meritorious formulae of its kind that I have ever been privileged to examine and recommend it most highly."

Thank you, Doctor. (This misleading phrase used in Cystex radio broadcasting programs, although as a matter of fact there is no doctor on the program.)

The aforesaid advertising claims for "Cystex" serve as representations on the part of respondent that said product is an effective remedy and cure for the various ailments, disorders, and diseased conditions of the human kidneys and bladder and that said product is endorsed and recommended by competent medical authorities.

PAR. 3. In truth and in fact, "Cystex" is not effective remedy and cure for the various ailments, disorders and diseased conditions of the human kidneys and bladder enumerated in the respondent's advertising matter irrespective of the cause or causes of the said ailments and disorders, or the condition thereof. Ailments and disorders of the kidneys and bladder arise from many causes and there is no specific remedy or treatment that is effective in all cases and under all conditions. The proper method of treatment and the kind of medicine to be used in the treatment of diseased conditions of the human kidneys and bladder are determined by many factors and a thorough diagnosis by a competent physician is always advisable and in many instances essential to the proper and adequate treatment of such ailments and disorders. Respondent's product is not endorsed or recommended by competent medical authorities as an effective remedy and cure for the various disorders and ailments of the human kidneys and bladder.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Mendaco," respondent has caused false advertisements containing representations and claims with respect to the properties of said proprietary product, "Mendaco," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Asthma Cause Dissolved in 1 Day. Thanks to the Prescription of a physician with 30 years experience, it now is possible to get rid of those terrible spells of choking, gasping, coughing and wheezing Asthma by dissolving the true cause which is mucus or phlegm. No more burning of powders, no more hypodermic injections. This prescription, Mendaco, starts to work in 3 min-

utes, removing the mucus cause of Asthma attacks, also helping to purify the blood and restore vitality so that you can sleep soundly all night, eat anything, and work and enjoy life. Mendaco is so successful it is guaranteed to give you free, easy breathing in 3 hours and to stop your Asthma attacks and satisfy completely in 8 days or money back on return of empty package. Get Mendaco from your druggist today. The guarantee protects you.

It dissolves, releases and helps remove the mucus or phlegm that causes choking, gasping attacks of asthma. Second, it relaxes thousands of tiny contracted muscles in the bronchial tubes; and third, it stimulates and refreshes the blood.

It promotes body metabolism, stimulating and refreshing the blood.

The aforesaid advertising claims for "Mendaco" serve as representations on the part of respondent that said product is an effective remedy and cure for asthma.

PAR. 5. In truth and in fact "Mendaco" is not an effective remedy and cure for asthma. It will not dissolve the cause of asthma in one day or any other period of time irrespective of the cause or causes of the disorder, thus permanently relieving the symptoms such as choking, gasping, coughing, and wheezing. It will not stimulate or refresh the blood or promote body metabolism and does not remove the cause of asthma.

Asthma is caused, in the majority of cases, by sensitization to some foreign protein, such as horse dander, rabbit fur, pollens, and other minute protein particles. In order to effectively and adequately treat asthma, therefore, it is necessary to determine the cause or causes of the disorder and treat such cause or causes. No specific remedy or type of treatment is effective in all cases and under all conditions and respondent's product is nothing more than a palliative in any case and under any condition.

PAR. 6. The use of the aforesaid false advertisements, disseminated in the manner above described, induce or is likely to induce, directly or indirectly, the purchase of respondent's drugs, to wit, Cystex and Mendaco.

PAR. 7. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution of remedies and treatments for the same ailments, disorders, and diseased conditions of the human body listed in the respondent's advertising matter who do not misrepresent the therapeutic values and qualities of their said products.

PAR. 8. 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 and deceived a substantial portion of the purchasing public into the erroneous belief that such repre-

sentations are true and into the purchase of substantial quantities of respondent's said products as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors and as a result thereof 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. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 19th day of September 1938, issued and served its complaint in this proceeding upon said respondent, The Knox Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 10, 1939, 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 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, accepted, and filed, 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 respondent, The Knox Co., is a Missouri corporation, engaged in the sale and distribution of a proprietary preparation called "Cystex," advertised and sold as a remedy for

kidney and bladder disorders, and a proprietary preparation called "Mendaco," advertised and sold as a remedy for asthma. Its principal office is at 811 West Seventh Street, Los Angeles, Calif. Its warehouse and manufacturing plant are located at Buffalo, N. Y., from which its products are distributed by its sales agent, a partnership by the same name.

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparations, when sold by it, to be shipped from its said place of business in Buffalo, N. Y., to the purchasers thereof, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary products so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, 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 like or similar proprietary products or other products designed and intended for similar usage 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, and for the purpose of inducing the purchase of its proprietary product, "Cystex," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product, "Cystex," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said misleading advertisements so used and disseminated as aforesaid are the following:

If functional disorders of the kidneys or bladder make you suffer from getting up nights, nervousness, leg pains, circles under eyes, dizziness, backache, swollen joints, excess acidity or burning passages, don't rely on ordinary medicines, fight such troubles with the doctors prescription Cystex.

Dr. Goodall says: "More than 5 million men and women in all parts of the world have used Cystex for functional kidney disorders."

I shall quote from a letter recently received from the head of the Health Department of an important city: "I am happy to say that in my opinion Cystex is the best remedy for functional kidney ailments."

Dr. Walter R. George, former Health Commissioner of Indianapolis, U. S. A. says: "I unhesitatingly recommend Cystex to sufferers from functional kidney ailments."

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A common cause of kidney ailments is germs which are developed in the body during colds, or by bad teeth or tonsils, or through bacterial diseases.

Dr. George B. Knight, physician, Camden, says: "Yet Cystex contains no harmful or injurious ingredients."

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Dr. Goodall says: "Cystex acts in three ways to help combat these troubles. First, it fights the germs which may cause the kidneys to function poorly, second it soothes and tones kidneys, * * *."

Dr. C. Van Straubenzee, a noted European physician wrote: "I consider Cystex one of the most meritorious formulas of its kind that I have ever been privileged to examine and recommend it most highly."

Thank you, Doctor. (This misleading phrase used in Cystex radio broadcasting programs, although as a matter of fact there is no doctor on the program.)

Everyone at times may have functional kidney disorders. That may be your trouble too. Symptoms, often due to functional kidney disorders, are getting up nights, leg pains, nervousness, dizziness, rheumatic pains, swollen ankles, dark circles under your eyes and loss of energy. If you are suffering from these functional troubles, get Cystex, Cystex, from your druggist today. A money back guarantee protects you.

Some of the aforesaid advertising claims for "Cystex" serve as representations on the part of respondent that said product is an adequate remedy or cure for ailments, disorders, and diseased conditions of the human kidneys and bladder, irrespective of the cause or condition thereof.

PAR. 3. Ailments, disorders, and diseased conditions of the human kidneys or bladder often arise from, or are due to, or persist because of a systemic or organic derangement of some character. In such cases, while urinary antiseptics and diuretics frequently are used for temporary relief, "Cystex" does not constitute a cure or remedy for such ailments and disorders nor is it an adequate or competent treatment therefor. Such ailments, disorders, and diseased conditions may also arise from other causes requiring various types of treatment, depending upon the particular cause of the condition in such case. "Cystex" does not constitute a cure or remedy for, or an adequate

or competent treatment for, all nonorganic or nonsystemic cases due to such conditions, irrespective of the cause.

The various symptoms mentioned in respondent's advertising matter as being indicative of kidney or bladder derangement also may be symptoms of conditions dissociated from the kidneys and bladder, and the presence of such symptoms does not positively indicate kidney or bladder derangement. Swollen joints, leg pains and so-called rheumatic pains may be and sometimes are symptoms of organic kidney and bladder disturbances. These symptoms, when present in cases of kidney or bladder troubles, may be and generally are of a systemic or organic origin. Backache, nervousness, dizziness, burning of the urinary passage, and "getting up nights" may be and sometimes are symptoms of kidney or bladder ailments that are systemic or organic in character.

Functional disorders of the kidneys and bladder may, and sometimes do, arise from organic disturbances. For such functional disorders, while urinary antiseptics and diuretics frequently are used for temporary relief, "Cystex" is not a cure or remedy, nor is it an adequate treatment therefor.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Mendaco," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product, "Mendaco," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said misleading advertisements so used and disseminated as aforesaid are the following:

Asthma Cause Dissolved in 1 Day. Thanks to the Prescription of a physician with 30 years experience, it now is possible to get rid of those terrible spells of choking, gasping, coughing and wheezing Asthma by dissolving the true cause which is mucus or phlegm. No more burning of powders, no more hypodermic injections. This prescription, Mendaco, starts to work in 3 minutes, removing the mucus cause of Asthma attacks, also helping to purify the blood and restore vitality so that you can sleep soundly all night, eat anything, and work and enjoy life. Mendaco is so successful it is guaranteed to give you free, easy breathing in 3 hours and to stop your Asthma attacks and satisfy

completely in 8 days or money back on return of empty package. Get Mendaco from your druggist today. The guarantee protects you.

It dissolves, releases and helps remove the mucus or phlegm that causes choking, gasping attacks of asthma. Second, it relaxes thousands of tiny contracted muscles in the bronchial tubes; and third, it stimulates and refreshes the blood.

It promotes body metabolism, stimulating and refreshing the blood.

The aforesaid advertising claims for "Mendaco" serve as representations on the part of respondent that said product is an effective remedy and cure for asthma.

Asthma is caused by sensitization to some foreign protein, such as horse dander, rabbit fur, pollens, and other minute protein particles, or other varying causes which may not be readily determined. In order to effectively and adequately treat asthma, it is necessary to determine the cause or causes of the disorder and directly treat such cause or causes.

PAR. 5. "Mendaco" does not constitute a remedy or cure for asthma. It is not an adequate or effective treatment therefor and does not permanently relieve the symptoms thereof such as choking, gasping, coughing, or wheezing, or possess therapeutic value in excess of furnishing, in some cases, temporary relief from the symptoms of asthma.

"Mendaco" does not purify, stimulate, refresh or have any beneficial effect on the blood or promote body metabolism.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution of remedies and treatments for the same ailments, disorders, and diseased conditions of the human body listed in the respondent's advertising matter who do not misrepresent the therapeutic values and qualities of their said products.

PAR. 7. 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 and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true and the purchase of substantial quantities of respondent's said products as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in com-

merce and unfair and deceptive acts and practices 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 a stipulation as to the 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, The Knox Co., its officers, representatives, agents, and employees directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations containing drugs now designated by the names "Cystex" and "Mendaco," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names, or under any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisements represent, directly or through implication, that said preparation "Cystex" is an adequate remedy or cure or competent treatment for ailments, disorders, diseased conditions of the human kidneys and bladder, unless such representations are restricted to those cases of such disorders as are nonorganic and nonsystemic in character; or that said preparation is a cure or remedy for, or an effective treatment for, all ailments and disorders of the human kidneys and bladder which are nonsystemic and nonorganic; or that the presence of any of the following symptoms—swollen joints, leg and rheumatic pains, backache, nervousness, dizziness, burning of the urinary passage, "getting up nights,"

circles under the eyes, excess acidity or loss of energy—is necessarily indicative of ailments or diseased conditions which can be successfully treated by use of said preparation; or that the preparation "Mendaco" is a cure or remedy or an effective treatment for asthma or permanently relieves the symptoms thereof such as choking, gasping, coughing, or wheezing, or possesses any therapeutic value in the treatment of asthma in excess of furnishing, in some cases, temporary relief from the symptoms of asthma; or that "Mendaco" purifies, stimulates, refreshes or has any beneficial effect on the blood or promotes body metabolism.

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

SAM BELL, DOING BUSINESS AS LONGWEAR PAINT & VARNISH WORKS

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

Docket 3632. Complaint, Oct. 18, 1938—Decision, Aug. 1, 1939

Where an individual engaged in manufacture and sale of mixtures or compounds by him described as paints, and in purchase of such mixtures or compounds from others, and in resale thereof, and in selling such products to peddlers who resold same direct to consumers from automobile trucks in other States, and in selling same to purchasers in States other than State of origin—

(*a*) Sold said mixtures and compounds in containers to which he caused labels to be affixed with purported statements of qualitative and quantitative analysis of contents thereof, and which indicated that such mixtures and compounds were paints of good quality and composed of usual ingredients, and in proper proportions, from which such paints are made, facts being mixtures or compounds therein contained were of no protective value as paints, but had calcium carbonate content of 65 percent to 75 percent, and white lead or zinc sulphate content of only 1 percent or less, and could not properly be classified as paints, and were not made of proper pigments and suitable liquids and were incapable of forming solid adherent covering when spread on surface for purposes of decoration or protection, or both; and

(*b*) Sold said mixtures or compounds in containers to which were affixed labels, in some cases, setting forth what appeared to be name of manufacturer of contents, such as "Eagle Paint and Color Works," together with brand name "Eagle," and, in some cases, setting forth what appeared to be name and address of such manufacturer, such as "Crown White Lead & Zinc Corporation, Detroit, Michigan," together with brand name "Crown," facts being such firm and brand names printed on said labels as aforesaid, were fictitious and contents in question had not been produced by manufacturers thus indicated;

With capacity and tendency to mislead and deceive members of purchasing public, and to induce them to buy such mixtures or compounds in mistaken belief that they were composed of the ingredients shown in what purported to be the analysis printed upon the labels affixed to the containers, and had been produced by a manufacturer whose name was printed thereon, and of unfairly diverting trade to him from those of his competitors who sell paints of good quality and who do not falsely represent nature and quantity of the ingredients of which such paints are made, and origin of manufacturers of their products; to competitors' substantial injury:

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

Before *Mr. William C. Reeves*, trial examiner.
Mr. William L. Pencke and *Mr. B. G. Wilson* for the Commission.
Charno & Drummond, of Kansas City, Mo., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Sam Bell, an individual doing business under the name and style of Longwear Paint and Varnish Works, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeeding 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, Sam Bell, is an individual doing business under the name and style of Longwear Paint and Varnish Works, with his principal place of business located at 2014 Burlington Avenue, North Kansas City, Mo. Said respondent is engaged in the manufacture, the purchase for resale, and the sale and distribution of paint and varnish in commerce among and between the various States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in the said products sold and distributed by him 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 said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar products 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 respondent's business and for the purpose of inducing the purchase of said products, respondent has caused and causes certain labels to be affixed to the containers of the paint manufactured, offered for sale, sold, and distributed by respondent in commerce as hereinbefore set out.

Many of the said labels affixed as above have printed on their faces a purported analysis of the paint within the respective containers whereon said labels appear. Certain of said labels affixed as above have printed on their faces general statements purporting to indicate the character, content, and standard of quality of

the paint within the respective containers whereon said labels appear. Each and all of said labels affixed as above have printed on their faces certain statements purporting to represent and to indicate the name of the manufacturer and the location and place of manufacture of the paint within the respective containers whereon said labels appear.

PAR. 4. The said representations as made by respondent in the manner and method as set out in paragraph 3 are in many instances false, misleading, and untrue.

In truth and in fact, the analyses and general statements as printed and appearing on the faces of said labels are often false, incorrect, and misleading. Said analyses and statements are not true representations of the actual analysis or the real character, content, and standard of quality of the paint within the respective containers whereon said labels are affixed and appear.

Certain of the manufacturers' names and the locations and places of manufacture as printed and appearing on the faces of said labels are fictitious and indicative of nonexistent individuals, firms, partnerships, or corporations never engaged in the manufacture or the sale and distribution of paint and varnishes at the place or places indicated by the said representations as printed and appearing on the said labels so affixed as above.

PAR. 5. There are among respondent's competitors, as described in paragraph 2, many who sell and distribute like or similar products who do not misrepresent their respective products or matters pertaining thereto.

PAR. 6. Each and all of the false and misleading representations made by the respondent in the sale and distribution of his products as hereinabove set out have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from competitors engaged in selling and distributing like and similar products who truthfully represent the same.

Respondent's acts and practices as herein detailed serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that respondent's products are as indicated by respondent's descriptions and representations.

As a consequence 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. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 18, 1938, issued its complaint in the above entitled proceeding and caused same to be served on the respondent, Sam Bell, an individual doing business under the name and style of Longwear Paint and Varnish Works, charging him with violation of the provisions of said act. The respondent entered his appearance herein on December 3, 1938, and filed an answer to said complaint in which answer said respondent admitted all of the material allegations in said complaint, and thereafter on April 6 and 7, 1939, at the instance of Wm. L. Pencke, counsel for the Commission, testimony was introduced and evidence received in support of the charges stated in the complaint and in opposition thereto by Warren A. Drummond of the firm of Charno & Drummond before Wm. C. Reeves, an examiner for the Commission duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and answer thereto, the testimony and other evidence and the brief of counsel for the Commission. Counsel for the respondent filed no brief and made no request for permission to present oral argument, 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 respondent Sam Bell for about 20 years has carried on business under the name and style of Longwear Paint and Varnish Works with his principal place of business at 2014 Burlington Avenue, North Kansas City in the State of Missouri, during which time he has been engaged in the business of the manufacture and sale of mixtures or compounds described by him as paints and the purchase of such mixtures or compounds from others

and the resale of same. Said respondent has caused such mixtures or compounds sold by him to be transported from his place of business in the State of Missouri to the respective purchasers thereof in States of the United States other than the State of Missouri. Respondent also has sold such mixtures or compounds to peddlers who have resold same direct to consumers from automobile trucks in States other than the State of Missouri, and in the course and conduct of his said business has been and is now in active competition with various partnerships and corporations and other persons engaged in the manufacture and sale or the sale of various types of paints in commerce among several States of the United States.

PAR. 2. Respondent in the course of his business as described in paragraph 1 hereof caused labels to be affixed to the containers of the mixtures and compounds sold by him as paints, which labels had printed thereon what purported to be statements of the result of a qualitative and quantitative analysis of each of said mixtures or compounds, but such statements were in all respects false and did not show each of the several ingredients constituting the contents of each of the containers to which such labels were affixed or the proportionate part of each of the ingredients of the several mixtures or compounds sold by him as paints. The statements so printed upon such labels indicated that the contents of the containers to which such labels were affixed were paints of good quality and were composed of the usual ingredients and in the proper proportions from which paints of good quality were made, whereas the contents of such containers were mixtures or compounds of no protective value as paints but had a calcium carbonate content of 65 to 75 percent and had a white lead or zinc sulphate content of only 1 percent or less, and could not be properly classified as paints. Such mixtures or compounds were not made of proper pigments and suitable liquids and were incapable of forming a solid adherent covering when spread on a surface for purposes of decoration or protection or both.

PAR. 3. Some of the labels affixed to the containers of mixtures or compounds sold by respondent as paints, as set out in paragraph 2 hereof, had printed thereon what would appear to be the name of the manufacturer of the contents of the containers, namely, the "Eagle Paint and Color Works" together with the brand name of "Eagle" and other such labels had printed thereon what would appear to be the name and address of the manufacturer of the contents of the containers to which such labels were affixed, namely, the "Crown White Lead & Zinc Corporation, Detroit, Michigan," together with the brand name of "Crown." Each of these firm names and brand

names printed on the labels, as stated, was fictitious, and the contents of the containers to which the labels were affixed had not been produced by manufacturers indicated by the names printed upon the respective labels.

PAR. 4. The sale by respondent of the mixtures or compounds, as set out in paragraphs 2 and 3 hereof, has had the capacity and tendency to mislead and deceive members of the purchasing public and to induce them to purchase such mixtures or compounds in the mistaken belief that such mixtures or compounds were composed of the ingredients shown in what purported to be the analyses printed upon the labels affixed to the containers and had been produced by a manufacturer whose name was printed upon the respective labels. The use of such labels has, and has had, the capacity and tendency unfairly to divert trade to respondent from those of his competitors who sell paints of good quality and who do not falsely represent the nature and quantity of the ingredients from which such paints are made and who do not falsely represent the origin or manufacturers of paints sold by them, and as a result, substantial injury has been done to competitors of respondent in interstate commerce.

CONCLUSION

The acts and practices of the respondent Sam Bell, trading under the name and style of Longwear Paint and Varnish Works under the circumstances described in the foregoing findings are all to the prejudice of the purchasing public and to competitors of respondent and constitute unfair methods of competition in commerce and are in violation of the provisions 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, in which answer the respondent admitted all the material allegations of the complaint, 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, brief filed by counsel for the Commission (respondent not having filed brief 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 the Federal Trade Commisison Act.

It is ordered, That the respondent, Sam Bell, individually and doing business as Longwear Paint and Varnish Works, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of paint products or other like articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, labeling, or selling as paint any product which does not contain the necessary ingredients in quantities sufficient to to give it the quality, character, or value of paint.

2. Using any analysis on labels, in advertising or in any other way which does not truthfully and accurately state the ingredients contained in said products and the proportion in which each appears.

3. Representing, in any manner, that respondent's paint products have a different quality, character, composition, or value different from the quality, character, composition, or value actually possessed by said products.

4. Representing that respondent's paint products are manufactured at any place other than the actual place of manufacture, or that they are manufactured by any person, corporation, or partnership other than that person, corporation, or partnership by whom said paint products are actually manufactured.

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

HARRY EPSTEIN, TRADING AS RESTORIA COMPANY

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

Docket 3737. Complaint, Mar. 14, 1939—Decision, Aug. 1, 1939

Where an individual engaged in sale and distribution of "Restoria," medicinal preparation, as treatment for blood and remedy for blood disorders and related conditions; in advertisements which he disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed matter, including purported testimonial letters, and pamphlets, booklets, and advertising copy, and which advertisements were intended and calculated to induce purchase of his said product—

(*a*) Represented that said "Restoria" was an effective remedy or cure for various conditions due to "bad blood," such as ulcers, eruptions, swollen glands, eczema, etc., and constituted a competent treatment for such condition and was a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning, and other related conditions, and would furnish relief therefrom;

(*b*) Represented, as aforesaid, that it would control diseased blood and would restore the same, and was safe and harmless, and would produce no bad after effects, and that it was a remedy or cure for syphilis and a competent treatment therefor, and that persons suffering from said ailment would react favorably within a short time after using said "Restoria;" and

(*c*) Represented that it was manufactured in modern laboratories and under expert supervision;

Facts being it was not a competent treatment nor effective remedy or cure for said various conditions, and use would not relieve the same or build up the body, sufferers from syphilis would not be favorably affected thereby, it was not manufactured in a modern laboratory or under supervision of skilled scientist, and would not control diseased blood nor restore the same, was not harmless under all conditions of use, but might have severe harmful results when used by public in treatment of conditions for which it was recommended, and use by uninformed persons under conditions prescribed, or such as are customary and usual, might, in some cases, cause users to suffer irreparable injury to health, and it was definitely harmful, by reason of certain ingredients, in early treatment of syphilis, in which iodides contained therein might disseminate and generalize the disease, and, by reason of iodine content, might aggravate certain diseases, such as pulmonary tuberculosis, hyperthyroidism and nephritis;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations and advertisements were true, and of inducing, directly or indirectly, purchase by public of such drug-containing medicinal preparation, and with likelihood so to induce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.
Mr. Joseph A. Padway, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Harry Epstein, an individual, trading as Restoria Co., hereinafter referred to as respondent, has violated the provisions of the 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 Harry Epstein is an individual, doing business under the trade name of Restoria Co., with his principal office and place of business located at 805 East Mason Street, in the city of Milwaukee, State of Wisconsin. Respondent, for more than 1 year last past, has been and still is engaged in the sale and distribution of a certain medicinal preparation known as "Restoria" which is offered for sale and sold as a treatment for the blood and remedy for blood disorders and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Wisconsin, to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce, in said preparation, 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 aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce, among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as com-

merce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Diseased Blood. Free Book tells of Control and Relief to thousands of sufferers.

Restoria is manufactured in thoroughly equipped, modern laboratories and under the supervision of trained experts. It is a stable and reliable product made of only the best ingredients, as must be the case where the battle is against an enemy as persistent and overpowering as syphilis.

You must constantly bear in mind that the earlier in the development of the disease the Restoria Treatment is begun, the more potent and beneficial is the treatment, as treatment affects very favorably syphilis cases in the first and second stages but not so favorably in the third or tertiary stage.

No Bad After-Effects. The Restoria treatment is 100 per cent safe, and its use is warranted to produce no bad after-effects.

No harm can come from the use of Restoria

* * * we know from past experience and from what thousands of users have told us that the average person should react favorably within a very short time.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent places in pamphlets, booklets, and in advertising copy. Among, and typical of the false statements and representations, disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising, are the following:

I have used two bottles of your Restoria which have cured my rheumatism. * * *

I have seen and heard of the results of your Restoria in the case of my mother, long afflicted with Water Eczema * * * My brother works in Harrisburg, Pa., and he came in touch with Restoria there. He bought two bottles, and it cured my mother * * *

* * * I was rapidly getting worse, worse, worse, until I was on the verge of suicide. Ulcers began to appear on my body, and all sorts of unusual pains kept me in constant misery. My sleep was rarely ever natural * * * my throat was inflamed and constantly sore, and near each elbow a horrid looking sore formed * * * In less than a week after beginning Restoria, the sores on my arms began to dry, and I began to feel like a new woman. * * * After five months' treatment with your wonderful Restoria, I can truthfully say, I am well.

I had Eczema on both hands for about three years. * * * I was finally induced to try Restoria. I bought one bottle, and before taking one-half of it my Eczema began to disappear, and before the bottle was gone I was entirely cured; and now I weigh about thirty pounds more than before taking Restoria.

* * * I've suffered from stubborn Neuritis and Neurasthenia for years and spent a fortune on patent medicine, only to poison my blood still further. Restoria is a wonder, and just what I've been looking for.

I was unfortunate enough to contract a serious disorder; I consulted the family physician; he said my case was well marked, and that it was clearly a case of blood poison. A friend to whom I confided my condition told me about Restoria * * * My improvement was steady, and after taking only the fifth bottle, I was pronounced well * * * I am grateful to Restoria * * * I want to say further: Take Restoria, and get well.

* * * I did not seem to gain, and after seventeen weeks my condition was in every way worse. The local swelling and inflammation had become alarming; painful and offensive ulcers appeared in my mouth, and the glands of my throat were beginning to enlarge * * * I had been told about Restoria, * * * I began taking it * * * In less than ten days the local ulcers began to dry up and disappear, and I was generally better * * * I am now well and strong * * *

* * * Restoria is the best blood medicine I have ever heard of, and it is doing the work in my case * * *

* * * it has taken those scars off my face, and I am improving in general health.

* * * One year from the time I started with Restoria, I had my blood tested, and I am a sound and well man—thanking Restoria for my health.

PAR. 3. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Restoria"

(*a*) is an effective remedy or cure for various conditions due to "bad blood", such as ulcers, eruptions, swollen glands, eczema, etc., and constitutes a competent treatment for such conditions;

(*b*) is a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning and other related conditions, and will furnish relief from such conditions;

(*c*) will control diseased blood and will restore the blood;

(*d*) is manufactured in modern laboratories under expert supervision;

(*e*) is a remedy or cure for spyhilis and constitutes a competent treatment therefor, and that persons suffering from syphilis will react favorably within a short time after using Restoria;

(*f*) is safe and harmless and its use will produce no bad after effects.

The aforesaid representations and claims used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, Restoria is not a competent treatment, nor effective remedy or cure for bad blood, rheumatism, syphilis, neuritis, neurasthenia, eczema, ulcers, swollen glands, skin eruptions, or blood poison, and its use will not relieve these conditions or build up the body. Syphilis sufferers will not be favorably affected by Restoria.

Said preparation is not now manufactured in a modern laboratory, nor under the supervision of skilled scientists.

Restoria will not control diseased blood, nor restore the blood.

Restoria is not harmless under all conditions of use, but in truth and in fact, its use may have severe harmful results when used by the public in the treatment of the conditions for which it is recommended by respondent.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid, in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparations by uninformed persons under the conditions prescribed or under such conditions as are customary and usual, may in some cases cause them to suffer irreparable injury to health. By reason of the existence of iodides in respondent's preparation, the use of said preparation would be definitely harmful in the early treatment of syphilis in that these iodides may disseminate and generalize the disease, and, further, that the administration of a preparation containing iodine may aggravate certain diseases such as pulmonary tuberculosis, hyperthyroidism, and nephritis.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparations, 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 and mistaken belief that such false statements representations and advertisements are true, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondent's medicinal preparation containing drugs.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 14, 1939, issued and served its complaint in this proceeding upon respondent Harry Epstein, an individual, trading as Restoria Co., charging him with the use of unfair and deceptive acts and practices 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 with-

draw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 Harry Epstein is an individual, doing business under the trade name of Restoria Co., with his principal office and place of business located at 805 East Mason Street, in the city of Milwaukee, State of Wisconsin. Respondent, for more than 1 year last past, has been and still is engaged in the sale and distribution of a certain medicinal preparation known as "Restoria," which is offered for sale and sold as a treatment for the blood and remedy for blood disorders and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Wisconsin, to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation 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 aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in

the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Diseased Blood Free Book tells of Control and Relief to thousands of sufferers.

Restoria is manufactured in thoroughly equipped, modern laboratories and under the supervision of trained experts. It is a stable and reliable product made of only the best ingredients, as must be the case where the battle is against an enemy as persistent and overpowering as syphilis.

You must constantly bear in mind that the earlier in the development of the disease the Restoria Treatment is begun, the more potent and beneficial is the treatment, as treatment affects very favorably syhphilis cases in the first and second stages but not so favorably in the third or tertiary stage.

No Bad After-Effects. The Restoria Treatment is 100 per cent safe, and its use is warranted to produce no bad after-effects.

No harm can come from the use of Restoria

* * * we know from past experience and from what thousands of users have told us that the average person should react favorably within a very short time.

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set-out above by means of purported testimonial letters which the respondent places in pamphlets, booklets, and in advertising copy. Among, and typical of the false statements and representations, disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising, are the following:

I have used two bottles of your Restoria which have cured my rheumatism. * * *

I have seen and heard of the results of your Restoria in the case of my mother, long afflicted with Water Eczema * * * My brother works in Harrisburg, Pa., and he came in touch with Restoria there. He bought two bottles, and it cured my mother * * *

* * * I was rapidly getting worse, worse, worse, until I was on the verge of suicide. Ulcers began to appear on my body, and all sorts of unusual pains kept me in constant misery. My sleep was rarely ever natural * * * my throat was inflamed and constantly sore, and near each elbow a horrid looking sore formed * * * In less than a week after beginning Restoria, the sores on my arms began to dry, and I began to feel like a new woman. * * * After five months' treatment with your wonderful Restoria, I can truthfully say, I am well.

I had Eczema on both hands for about three years. * * * I was finally induced to try Restoria. I bought one bottle, and before taking one-half of it my Eczema began to disappear, and before the bottle was gone I was entirely cured; and now I weigh about thirty pounds more than before taking Restoria.

* * * I've suffered from stubborn Neuritis and Neurasthenia for years and spent a fortune on patent medicine, only to poison my blood still further. Restoria is a wonder, and just what I've been looking for.

I was unfortunate enough to contract a serious disorder; I consulted the family physician; he said my case was well marked, and that it was clearly a case of blood poison. A friend to whom I confided my condition told me about Restoria * * * My improvement was steady, and after taking only the fifth bottle, I was pronounced well * * * I am grateful to Restoria * * * I want to say further: Take Restoria, and get well.

* * * I did not seem to gain and after seventeen weeks my condition was in every way worse. The local swelling and inflammation had become alarming; painful and offensive ulcers appeared in my mouth, and the glands of my throat were beginning to enlarge * * * I had been told about Restoria, * * * I began taking it * * * In less than ten days the local ulcers began to dry up and disappear, and I was generally better * * * I am now well and strong * * *

* * * Restoria is the best blood medicine I have ever heard of, and it is doing the work in my case * * *

* * * it has taken those scars off my face, and I am improving in general health.

* * * One year from the time I started with Restoria, I had my blood tested, and I am a sound and well man—thanking Restoria for my health.

PAR. 3. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set-out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Restoria"

(*a*) is an effective remedy or cure for various conditions due to "bad blood", such as ulcers, eruptions, swollen glands, eczema, etc., and constitutes a competent treatment for such conditions;

(*b*) is a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning and other related conditions, and will furnish relief from such conditions;

(*c*) will control diseased blood and will restore the blood;

(*d*) is manufactured in modern laboratories under expert supervision;

(*e*) is a remedy or cure for syphilis and constitutes a competent treatment therefor, and that persons suffering from syphilis will react favorably within a short time after using "Restoria";

(*f*) is safe and harmless and its use will produce no bad after effects.

The aforesaid representations and claims used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, "Restoria" is not a competent treatment nor effective remedy or cure for bad blood, rheumatism, syphilis, neuritis, neurasthenia, eczema, ulcers, swollen glands, skin eruptions, or blood poisoning, and its use will not relieve these conditions or build up the body. Syphilis sufferers will not be favorably affected by "Restoria."

Said preparation is not now manufactured in a modern laboratory, nor under the supervision of skilled scientists.

"Restoria" will not control diseased blood, nor restore the blood.

"Restoria" is not harmless under all conditions of use, but in truth and in fact its use may have severe harmful results when used by the public in the treatment of the conditions for which it is recommended by the respondent.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid, in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparation by uninformed persons under the conditions prescribed or under such conditions as are customary and usual, may in some cases cause them to suffer irreparable injury to health. By reason of the existence of iodides in respondent's preparation, the use of said preparation would be definitely harmful in the early treatment of syphilis in that these iodides may disseminate and generalize the disease, and, further, that the administration of a preparation containing iodine may aggravate certain diseases such as pulmonary tuberculosis, hyperthyroidism, and nephritis.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparation, 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 and mistaken belief that such false statements, representations, and advertisements are true, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondent's medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commis-

sion having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Harry Epstein, individually and trading as Restoria Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or any other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation containing drugs now designated by the name "Restoria," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said medicinal preparation "Restoria," is a cure or remedy or an effective treatment for bad blood, ulcers, swollen glands, or eczema; or that said preparation is a cure or remedy for neuritis, neurasthenia, rheumatism, blood poisoning, or skin eruptions, or is beneficial in relieving any of such conditions; or that said preparation is a cure or remedy for or is beneficial in the treatment of syphilis, or will control diseased blood or restore the blood; or that said preparation is manufactured in a modern laboratory or under the supervision of skilled scientists, unless and until such is the fact; or which advertisements fail to reveal that said preparation is not a wholly safe drug to be used by the lay public in self-medication.

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

IN THE MATTER OF

WILLIAM G. NASH, SR., WILLIAM G. NASH, JR., AND FLORENCE NASH COX, TRADING AS NASH BROTHERS DRUG COMPANY

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

Docket 3775. Complaint, Apr. 27, 1939—Decision, Aug. 1, 1939

Where three individuals engaged, as partners, in compounding, selling, and distributing a medical or pharmaceutical preparation under designation "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic"; in advertisements which they disseminated through the mails, through newspapers and periodicals of general circulation, through circulars and other printed or written matter, and through continuities broadcast from radio stations of extrastate audience, and which advertisements were intended and calculated to induce purchase of their said product—

(*a*) Represented, directly or through implication, that said preparation was a cure or remedy for malaria and would prevent development of malaria, and was an effective treatment for all types thereof, facts being it was not such a remedy or preventive, and would not accomplish such results and, while possessing properties capable, under certain conditions, of being beneficial in treatment of certain forms of malaria at certain stages of development, was not a remedy or cure, or safe and effective treatment for, all forms or types thereof;

(*b*) Represented that 9 out of 10 persons in the southern part of the United States had malaria, and that presence of laziness, lack of energy and pep, aches, trembling, dizziness, headaches, or sallow, yellow complexion, was indicative of said ailment, and that persons having any one or more of such symptoms had malaria, facts being proportion of people indicated in the southern States did not suffer from said condition, and symptoms enumerated, while frequently such as might be and were associated with malaria, were also often associated with or due to other disorders;

(*c*) Represented that said preparation would clean out the system and restore the normal function of the bowels, and add red corpuscles to the blood, and aid digestion and increase appetite, and constituted an effective tonic which would restore vigor and vitality, facts being it would not accomplish such results and was not such a remedy;

(*d*) Represented that said preparation possessed remedial or curative value in treatment of constipation, biliousness, liver trouble, dyspepsia, and numerous other conditions and ailments to which the body is subject, and was both a preventive and cure for colds, facts being it was not such a preventive or cure, nor effective remedy or cure for constipation, biliousness, and various other ailments and conditions above set forth and claimed; and

(*e*) Represented that it was a new discovery which was in no way habit forming, and in no way harmful to users, including infants, children, adults, and elderly people, and that it was indorsed by nurses, physicians, and health officials throughout the southern part of the United States, facts being

continued use thereof rendered it habit forming as laxative or cathartic, it was not a new discovery nor wholly safe or harmless for use in self-medication of infants, children, adults, and elderly people, due to inclusion of certain ingredients which had powerful effect on heart and other organs or parts of the body, and which might cause injury to health of users having cardiac or systemic weaknesses, and it had not been indorsed by nurses, etc., as above claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and into purchase of their said drug-containing preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondents William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co., and their principal office and place of business is in Jonesboro, Ark.

Par. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of Arkansas, and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is you breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly splotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach? Sour stomach?
Stomach constantly upset?
Have you a cold you can't get rid of?
Are your kidneys functioning improperly or abnormally?
Do your knees and hands shake?
Do you tremble all over?
Are your children unruly, irritable, restless and sluggish?
IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of Pep, viz, vim, and vigor.

3. Satisfaction Guaranteed and again, Remember This is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain.

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "Nash's."

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The All Year Round Tonic, Remedy, Purgative, Preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. It is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing Going—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health Officials and Others Endorse Nash's Tonic.

10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar in meaning thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the causes of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventative and remedy or cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit-forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and that 9 out of 10 of the people residing in the southern part of the United States have malaria.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements.

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are symptoms of malaria. Said preparation is not a proper, effective, or unsurpassed remedy or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the bowels, nor will it add red corpuscles to the blood, aid digestion, or

increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of a laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery, and it is not a safe and harmless medicine for use in all cases by infants, children, adults, and elderly people, as represented and advertised by the respondents. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceeded any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect in the treatment of certain forms of malaria at certain stages of development, said preparation is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

Furthermore, said statements and representations are misleading and constitute false advertisements in that they fail to reveal the fact that the drugs "quinidine" or "quinidine alkaloids" and "cinchonine alkaloids," as used in said preparation, have a powerful effect upon the heart and upon other organs or parts of the body which may cause injury to the health of the user if taken in accord with the statements and recommendations contained in said advertisements, or under such conditions as are customary or usual.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, 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 and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 27, 1939, issued and served its complaint in this proceeding upon the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondents having filed no answer, 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 arguments 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, accepted, and filed, 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, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co. and their principal office and place of business is at Jonesboro, Ark.

PAR. 2. The respondents are now and have been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District

of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business, in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Arkansas and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in your mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly splotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach?

Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

If you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. Nash's Tonic will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of PEP, viz, vim and vigor.

3. Satisfaction Guaranteed and again, Remember This Is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain!

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy, unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with NASH'S.

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The all year round tonic, remedy, purgative, preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. Is also a preventive for it will tend to prevent you from having malaria as well as

numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing GOING—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health officials and Others Endorse Nash's Tonic.

10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10) have malaria * * *

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar in meaning thereto but not herein set-out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the causes of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventive and remedy or cure of all types of malaria in the human body; that the use of said preparation will clean-out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and

that 9 out of 10 of the people residing in the southern part of the United States have malaria.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements.

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are classical symptoms of malaria. Laziness, lack of energy and pep, aches, sallow, yellow complexion, trembling, dizziness, and headaches may be and frequently are associated with malaria, but are also often associated with or due to other disorders. Said preparation is not a proper or effective remedy and preventive or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the bowels, nor will it add red corpuscles to the blood, aid digestion, or increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of a laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery. Said preparation is not a wholly safe or harmless medicine for use in self-medication of infants, children, adults, and elderly people as represented by respondent, as it contains a substantial quantity of quinidine and cinchonine alkaloids which have a powerful effect on the heart and other organs or parts of the human body and which may cause injury to the health of users having cardiac or systemic weaknesses. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceeded any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect on the treatment of certain forms of malaria at certain stages of development, said prepara-

tion is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, 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 and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

CONCLUSION

The above acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

The proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondents 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 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 the Federal Trade Commission Act.

It is ordered, That the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation containing drugs now designated as "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic qualities whether sold under the same names or under any other name or names, or disseminating or causing to be disseminated any

advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined by the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said medicinal preparation is a cure or remedy for malaria or will prevent the development of malaria in the human body or is an effective treatment for all types of malaria; or that said preparation will restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion, increase the appetite, restore vigor or vitality; or that said preparation is an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, or swamp chills; or that said preparation will prevent or cure colds; or that said preparation is a safe or harmless medicine for use in unsupervised medication of infants, children, adults, or elderly people; or that said preparation has been endorsed by nurses, physicians or health officials throughout the southern part of the United States or which represent that 9 out of 10 people in the southern part of the United States have malaria or that any appreciable percentage of persons residing in the southern part of the United States have malaria; or which represent that the presence of any or all of the following symptoms—laziness, lack of energy and pep, aches, trembling, dizziness, headaches, or sallow, yellow complexion—is necessarily indicative of malaria or that the presence of said symptoms is anything more than an indication that malaria may be present; or which advertisements fail to reveal that said preparation is not a wholly safe drug to be used by the lay public in self-medication.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether or not they intend to comply with this order, and if so, setting forth in detail the manner and form in which they intend to comply; and that within 60 days after service upon them of this order, said respondents shall 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

UNITED CORPORATION, TRADING AS VIRGINIA PRODUCTS COMPANY, AND GEORGE M. CRUMP, INDIVIDUALLY AND AS PRESIDENT OF UNITED CORPORATION

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

Docket 3093. Complaint, Mar. 31, 1937—Decision, Aug. 2, 1939

Where the word "Virginia," when used in connection with sale and distribution of meats or meat food products, or to describe such products, and particularly ham, had long since come to signify to and be understood by purchasing public as meaning ham or other meat and meat food products obtained from animals grown in said State and that ham thus designated had been cured and processed in a manner which had been well-known for more than a century as the Virginia method of curing hams, and which imparted distinctive flavor thereto and to ham products and meat and meat food products, and substantial portion of purchasing public had preference for ham obtained from hogs or cattle raised in said State and processed by method above referred to, and for meat and other meat food products obtained from animals raised therein; and,

Thereafter corporation and an individual, president thereof and in control of its business operations, policies, and trade practices, with sales offices in New York City, and engaged in sale and distribution, in commerce among the various States, of (1) deviled ham, some of which, packed for it by Chicago company, was not made from ham or hogs grown in State of Virginia, and some of which, packed for it by Maryland concern, was made for it from Virginia hams purchased from Virginia packers, and (2) corned beef hash, purchased from Chicago company above referred to, and of which corned beef used in manufacture did not come from cattle or beeves raised or purchased in Virginia, and in (3) invoicing, as thus engaged, their aforesaid products, shipped directly to the purchasers thereof from the plants of the Chicago or Maryland packers, from office in Richmond, Va.—

(*a*) Caused to be placed on the containers in which was contained said deviled ham, including both that packed and shipped by said Chicago company and that packed and shipped by said Maryland concern, labels reading "SOUTHERN STYLE DEVILED HAM With Vegetable Fat Net Weight 2 Lbs. OLD VIRGINIA BRAND U. S. Inspected and Passed by Department of Agriculture, Estab. No. 545. VIRGINIA PRODUCTS COMPANY, RICHMOND, VA., Distributors," and supplied customer drug stores and cafes with stickers or slips to be attached to the menu cards used by said customers and displaying, among other words of like import and effect, "Special Today OLD VIRGINIA Southern Style Deviled Ham Sandwich 15¢";

(*b*) Caused to be placed on the containers of said corned beef hash, packed as aforesaid by said Chicago company, labels reading "Contents 1 Lb. 4 Oz. OLD VIRGINIA BRAND CORNED BEEF HASH Ready to Brown. U. S. Inspected and Passed by Department of Agriculture. Packed for VIRGINIA PRODUCTS COMPANY Richmond, Va.," and supplied to various

drug store and cafe customers stickers or slips to be attached to menu cards used by them and setting forth, among other words of like import and effect, "Breakfast Special * * * Old Virginia Corned Beef Hash * * * 25¢";

(*c*) Made use of trade name "Virginia Products Company" in selling said deviled ham and corned beef hash in place of corporate name proper, never used in sale of said products and unknown to customers purchasing the same from it, and invoiced under said trade name such products to purchasers from office maintained by them in Richmond, for purpose of securing benefits flowing from reputation of Virginia ham and other Virginia meat food products; and

(*d*) Represented to purchasers and purchasing public, through use of word "Virginia" in aforesaid trade name, on labels and containers, and in describing said products, and on stickers and slips, and orally, and through invoicing same from Richmond, that meats used in all of their said products were obtained from hogs and cattle grown in said State, and that all of such products had been cured and processed by said well-known Virginia method;

Notwithstanding fact meats in said products, excepting deviled ham packed for it by said Maryland concern, were not, as above represented through use of word "Virginia" as aforesaid in trade name, on labels, etc., and in describing said products on stickers and slips above referred to, and otherwise, obtained from cattle or hogs grown in said State, but were from cattle and hogs grown elsewhere, and were not, with aforesaid exception, cured and processed by said well-known Virginia method nor in said State, but were cured and processed in other States and in manner different in every respect from said well-known Virginia method;

With effect of misleading substantial portion of purchasing public into erroneous belief that all said representations were true and that all of products sold and offered by them were meats or meat food products obtained from cattle and hogs grown in said State and cured and processed therein by well-known method, and of misleading and deceiving customers, to whom they furnished stickers or slips as above set forth, into belief that all of the deviled ham purchased by such customers from them was made from Virginia ham, cured and processed as above, and that corned beef hash thus purchased was made from beeves of cattle grown in Virginia, and into thus representing, in such beliefs, said deviled ham and corned beef hash to their customers, and with further result, as direct consequence, that number of purchasing public bought their products and trade was thereby unfairly diverted to them from competitors also engaged in sale and distribution of deviled ham and corned beef hash in commerce, and who do not make similar representations with respect to the type, quality or method of processing the same; to the injury of competition in commerce:

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

Before *Mr. William C. Reeves* and *Mr. Charles F. Diggs*, trial examiners.

Mr. Floyd O. Collins and *Mr. Edward L. Smith* for the Commission.

Mr. Martin F. O'Donoghue and *Mr. George F. Shea*, 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 United Corporation, a corporation trading as the Virginia Products Co., and George M. Crump, individually and as president of said United Corporation, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The United Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, and its legal address is 212 American Bank Building, Richmond, Va. For the purpose of conducting its business, as will be hereinafter described, it adopted and is now using the trade name "Virginia Products Company." The legal address of the Virginia Products Co. is 212 American Bank Building, Richmond, Va. Respondent George M. Crump is president and treasurer of the respondent United Corporation and controls and dictates the business operations, policies and trade practices of the United Corporation and the Virginia Products Co. The respondents are now and have been for several years last past, engaged in the sale and distribution in commerce among and between the various States of the United States of meat food products known as "Deviled Ham" and "Corned Beef" and have caused said products, when sold, to be shipped to purchasers thereof at various points in different States of the United States other than the State of origin of said shipments. Respondents now maintain, and have maintained at all times herein complained of, a constant current of trade in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondents are now, and at all times herein complained of have been, in competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of deviled ham and corned beef hash in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. The word "Virginia" when used in connection with the sale and distribution of meats or meat food products or to describe meats or meat food products, has for many years signified and meant, and has been understood to signify and mean, and now signifies and

means to the purchasing public, meat and meat food products obtained from animals grown in the State of Virginia and cured and processed in a manner which has been well known for more than a century as the Virginia method of curing meats, which method of curing and processing imparts a distinctive flavor to meats and meat food products. The word "Virginia" when used in connection with the sale and distribution of meats and meat food products and in describing meat and meat food products has acquired and for many years had, and now has, such secondary meaning, and a substantial portion of the purchasing public has expressed, and has a preference for meat and meat food products obtained from hogs or cattle raised in Virginia and processed by the method hereinabove referred to.

PAR. 4. Respondents, through arrangements with different meat packers, purchase deviled ham and corned beef ready packed and labeled as specified by respondents. Respondent corporation has adopted and at all times herein mentioned has used, and now uses, as and for its trade name the words "Virginia Products Co.," in selling, and offering for sale, said products in commerce among and between the various States of the United States. Respondents have also caused to be placed on the containers, in which said products are packed, labels reading as follows:

SOUTHERN STYLE

DEVILED HAM

With Vegetable Fat
Net Weight 2 Lbs.

OLD VIRGINIA BRAND

U. S. Inspected and Passed by Department
of Agriculture, Estab. No. 545

VIRGINIA PRODUCTS COMPANY

RICHMOND, VA.
Distributors

Contents 1 Lb. 4 Oz.
OLD VIRGINIA
BRAND
CORNED
BEEF HASH
Ready to Brown
U. S. Inspected and Passed by
Department of Agriculture
Packed for
VIRGINIA PRODUCTS COMPANY
Richmond, Va.

Among respondents' customers are various drug stores and cafes. To these customers the respondents furnish stickers or slips to be attached to the menu cards by said customers. On said stickers or slips are printed, among other words of like import and effect, the following:

Special Today
OLD VIRGINIA
Southern Style
Deviled Ham Sandwich
15¢

Breakfast Special
Juice of 1 Orange
Browned
Old Virginia
Corned Beef Hash
Buttered Toast
Coffee With Cream
25¢

PAR. 5. Respondents, by the use of the word "Virginia" in the trade name and on the labels used on the containers in which the products are packed, and in describing said products and on the stickers and slips above referred to and of many other representations of like import and effect not specifically set out, represent to the purchasing public that the meats used in said products are obtained from hogs and cattle grown in the State of Virginia, and that said products have been cured and processed by the well-known Virginia method.

PAR. 6. Each and all of said representations above set out and referred to are false and misleading for in truth and in fact, the meats in the products sold and advertised by the respondents are not obtained from cattle and hogs grown in the State of Virginia but are from cattle and hogs grown in States other than the State of Virginia. The meats used in the products sold by respondents are not cured and processed by the well-known Virginia method or in the State of Virginia, but are cured and processed in States other than the State of Virginia and are cured and processed in a manner different in every respect from the well-known Virginia method.

PAR. 7. All of said acts and practices above described and all of the representations as above set out had, and now have, the capacity and tendency to mislead and deceive, and did, and do, mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and did and do mislead a substantial portion of the purchasing public into the erroneous belief that the products sold and offered for sale by the respondents are meats or meat food products obtained from cattle and hogs grown in the State of Virginia and cured and processed in Virginia by the well-known Virginia method. As a direct consequence of said erroneous beliefs induced by the acts and representations of respond-

ents as hereinabove set out, a number of the purchasing public have purchased respondent's products with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the sale and distribution of deviled ham and corned beef in commerce among and between the various States of the United States who do not make similar representations with respect to the type, quality, or the method of processing said products. In consequence thereof, injury has been, and is being done to competition in commerce among and between the several States of the United States.

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 the Federal Trade Commission Act, the Federal Trade Commission, on March 31, 1937, issued and served its complaint in this proceeding upon respondents, United Corporation, a corporation trading as the Virginia Products Co., and George M. Crump, individually and as president of the United 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, the taking of testimony and evidence regarding jurisdictional matters set out in the third affirmative and separate defense contained in respondents' answer to the complaint, the entry of an order overruling the plea of lack of jurisdiction set out in said third affirmative and separate defense and directing that the case proceed to trial, further testimony and other evidence in support of the allegations of said complaint were introduced by Edward L. Smith, attorney for the Commission, and in opposition to the allegations of the complaint by Martin F. O'Donoghue and George F. Shea, counsel for the respondents, before Charles F. Diggs, 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 complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of the aforesaid attorney for the Commission and of the aforesaid Martin F. O'Donoghue; 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, United Corporation, is a corporation organized, existing, and doing business since about 1934 under and by virtue of the laws of the State of Virginia, with its address at 212 American Bank Building, Richmond, Va. For the purpose of conducting its business, as will be hereinafter described, it adopted and is now using, and as early as June 1936, and continuously since that time, has used, the trade name "Virginia Products Company." Respondent, George M. Crump, is now, and has been, president of respondent, United Corporation, since its organization and controls the business, operations, policies and trade practices of said respondent, United Corporation, trading as Virginia Products Co. The respondents are now, and since as early as June 1936 have been, engaged in the sale and distribution in commerce between and among the various States of the United States of meat food products known as "Deviled Ham" and "Corned Beef Hash," and have caused such products, when sold, to be shipped to the purchasers thereof at various points in different States of the United States other than the State of origin of such shipments.

PAR. 2. Respondents now maintain, and since as early as, if not earlier than, June 1936, have maintained a constant current of trade and commerce among and between the various States of the United States and in the District of Columbia, and they are now, and since as early as June 1936, if not prior to that time, have been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of deviled ham and corned beef hash in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The word "Virginia," when used in connection with the sale and distribution of meats or meat food products, or to describe meats or meat food products, particularly ham, has for many years signified and meant, and has been understood to signify and mean, and now signifies and means, to the purchasing public, ham, other meat and meat food products obtained from animals grown in the State of Virginia, and, as to ham, also that such ham has been cured and processed in a manner which has been well known for more than a century as the Virginia method of curing hams, which method of curing and processing imparts a distinctive flavor to ham and ham products, meat and

meat food products. The word "Virginia," as applied to ham and other meat food products and in describing ham and other meat food products, has acquired for many years, had and now has, such secondary meanings, and a substantial portion of the purchasing public has expressed and has a preference for ham obtained from hogs or cattle raised in Virginia and processed by the method hereinabove referred to and for other meat and meat food products obtained from animals raised in Virginia.

PAR. 4. The deviled ham and corned beef hash sold by the respondents between and among the various States of the United States and in the District of Columbia have been and are packed for them and purchased by them from various meat packers, who pack and label such deviled ham and corned beef hash as directed by the respondents. Some of such deviled ham has been packed for and purchased by respondents from Emmart Food Products Co. located in Chicago, Ill., which such deviled ham was made from hams purchased by Emmart Food Products Co. in their raw and green state in the city of Chicago, State of Illinois, from packers located in that city and such deviled ham was not made from ham or hogs grown in the State of Virginia. Some of the deviled ham sold by the respondents between and among the various States of the United States and in the District of Columbia has been packed for them and purchased by them from the Montell Co., a partnership located at Cambridge, Md., and from Montell, Inc., a Maryland corporation, which, on August 12, 1937, succeeded to the business prior thereto carried on by said Montell Co. Such deviled ham packed for the respondents by the Montell Co. and by Montell, Inc., has been made from Virginia hams purchased from Virginia packers. The corned beef hash sold by the respondents in commerce between and among the various States of the United States and in the District of Columbia has been purchased by them only from said Emmart Food Products Co. There is no ham of any kind in such corned beef hash nor does the corned beef which is used in said corned beef hash come from cattle or beeves raised or purchased in Virginia. On the containers in which said deviled ham has been packed by and shipped from Emmart Food Products Co., and on the containers in which such deviled ham has been packed by and shipped from the Montell Co. and Montell, Inc., the respondents have caused to be placed labels reading as follows:

SOUTHERN STYLE
DEVILED HAM
With Vegetable Fat
Net Weight 2 Lbs.

OLD VIRGINIA BRAND
U. S. Inspected and Passed by Department
of Agriculture, Estab. No. 545
VIRGINIA PRODUCTS COMPANY
RICHMOND, VA.
Distributors

On the containers in which said corned beef hash is packed by and shipped from Emmart Food Products Co., the respondents have caused to be placed thereon labels reading as follows:

Contents 1 Lb. 4 Oz.
OLD VIRGINIA
BRAND
CORNED
BEEF HASH
Ready to Brown
U. S. Inspected and Passed by
Department of Agriculture
Packed for
VIRGINIA PRODUCTS COMPANY
Richmond, Va.

Both of said labels were approved by the United States Department of Agriculture. But if at the time such labels were approved, the Department of Agriculture had known or believed that the respondents intended to lead purchasers and prospective purchasers and the public into believing that all of the products so labeled were products from Virginia, such approval would not have been given. On February 16, 1939, said United States Department of Agriculture rescinded its approval of the aforesaid label used on containers of corned beef hash, for the reason that the label was regarded as having become misleading on the basis of facts that were developed during the hearing of this matter.

PAR. 5. Among respondents' customers are various drug stores and cafes. To these customers the respondents furnish stickers or slips to be attached to the menu cards used by said customers. On said stickers or slips are printed, among other words of like import and effect, the following:

Special Today
OLD VIRGINIA
Southern Style
Deviled Ham Sandwich
15¢

Breakfast Special
Juice of 1 Orange
Browned
Old Virginia
Corned Beef Hash
Buttered Toast
Coffee with Cream
25¢

PAR. 6. Respondents, in selling deviled ham and corned beef hash, have used, and now use, and since as early as June, 1936, if not prior to that time, have used as their trade name the words "Virginia Products Company" in selling and in offering for sale the aforesaid products in commerce between and among the various States of the United States and in the District of Columbia. The respondents used the trade name Virginia Products Co. for the purpose of securing the benefits flowing from the reputation of Virginia ham and other Virginia meat food products. The proper name of the respondent corporation, namely, United Corporation, has never been and although the aforesaid deviled ham and corned beef hash are such name was unknown to the customers of said respondent corporation purchasing from it deviled ham and corned beef hash. Although the respondents' only sales offices are in New York City, and although the aforesaid deviled ham and corn beef hash are shipped directly to the purchasers thereof from the plants of the packers located in Chicago, Ill., or in Cambridge, Md., the aforesaid products are invoiced by the respondents from Richmond, Va. The only business done by the respondents in the State of Virginia is the invoicing from their office in Richmond, Va., of the corned beef hash and deviled ham packed for them by the packers aforesaid. An illustration of such invoices is the following:

VIRGINIA PRODUCTS COMPANY
Owners And Distributors Of The Famous
OLD VIRGINIA CORNED BEEF HASH

212 American Bank Building
P. O. Box 671

RICHMOND, VA., *January 28, 1938.*

Attention: Accounting Dept.,
SOLD TO Loft Inc.,
40th Avenue & 9th Street
Long Island City. N. Y.

ALP
TERMS: NET CASH SALESMAN

ALL CLAIMS MUST BE MADE WITHIN 5 DAYS

300 dozen #10 Famous Old Virginia Corned Beef Hash @ 24.50 per doz	7,350.00	
50 cases (100 dozen) #2 Famous Old Virginia Corned Beef Hash @ 9.98 per case	499.00	7,849.00
Less 10%		784.90
Order No. 84275		7,064.10

PAR. 7. Respondents by the use of the word "Virginia" in the aforesaid trade name Virginia Products Co. on the aforesaid labels, used on the containers in which the aforesaid products are packed, and in describing said products, and on the stickers and slips hereinabove referred to, by oral representations that such products are Virginia products, and by invoicing such products from Richmond, Va., represent to their purchasers and to the purchasing public that the meats used in all of said products are obtained from hogs and cattle grown in the State of Virginia and that all of such products have been cured and processed by the well-known Virginia method.

PAR. 8. Each and all of said representations hereinabove set out and referred to are false and misleading, for in truth and in fact, excepting for the deviled ham packed for respondents by the Montell Co. and Montell, Inc., the meats in the deviled ham and corned beef hash sold by the respondents are not obtained from cattle or hogs grown in the State of Virginia but are from cattle and hogs grown in states other than the State of Virginia. Excepting for the deviled ham packed for the respondents by the Montell Co. and Montell, Inc., the meats used in the aforesaid products sold by the respondents are not cured and processed by the well-known Virginia method nor in the State of Virginia, but are cured and processed in States other than the State of Virginia and are cured and processed in a manner different in every respect from the well-known Virginia method.

PAR. 9. All of said acts and practices hereinabove described and all of the representations as hereinabove set out have had, and now have, the capacity and tendency to mislead and deceive, and have misled, and do mislead, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and have misled and do mislead a substantial portion of the purchasing public into the erroneous belief that all of the products sold and offered for sale by the respondents are meats or meat food products obtained from cattle and hogs grown in the State of Virginia and cured and processed in Virginia by the well-known Virginia method. Respondents' customers to whom they furnish stickers or slips of the nature of those described in paragraph 5 hereof were misled and deceived by the representations described in paragraph 7 hereof, that all of the deviled ham purchased by them from the respondents was made from Virginia ham, cured and processed by the well-known Virginia method, and that the corned beef hash purchased by them from the respondents was made from the beeves of cattle grown in the State of Virginia, and in such beliefs so represented such deviled ham and corned beef hash to their customers. As a direct conse-

quence of said erroneous beliefs induced by the acts and representations of respondents as hereinabove set out, a number of the purchasing public have purchased respondents' products, with the result that trade has been unfairly diverted to the respondents from competitors engaged in the sale and distribution of deviled ham and corned beef hash in commerce among and between the various States of the United States who do not make similar representations with respect to the type, quality, or the method of processing said products. In consequence thereof, injury has been, and is being done to competition in commerce among and between the several States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 respondents, testimony and other evidence taken before William C. Reeves and Charles F. Diggs, 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 Edward L. Smith, Counsel for the Commission, and by Martin F. Q'Donoghue, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusions that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents United Corporation, trading as Virginia Products Co., its officers, representatives, agents, and employees and George M. Crump, individually and as president of respondent United Corporation, his representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of corned beef hash in interstate commerce or in the District of Columbia, until such corned beef hash is made from beeves of cattle grown in Virginia, do forthwith cease and desist:

(*a*) From using the name Virginia Products Co.

(*b*) From using the following label:

Contents 1 Lb. 4 Oz.

OLD VIRGINIA
BRAND
CORNED
BEEF HASH
Ready to Brown

U. S. Inspected and Passed by
Department of Agriculture

Packed for
VIRGINIA PRODUCTS COMPANY
Richmond, Va.

(*c*) From furnishing to their customers and prospective customers stickers or slips designating such corned beef hash as Old Virginia Corned Beef Hash.

(*d*) From invoicing from Richmond, Va., or from any other place in the State of Virginia.

(*e*) From representing orally or by any other means that such corned beef hash is made from any product originating in the State of Virginia.

(*f*) From using the word "Virginia" in any manner or form as a name for, or as a part of the name for, such corned beef hash.

And it is further ordered, That the respondents United Corporation, trading as Virginia Products Co., its officers, representatives, agents, and employees, and George M. Crump, individually and as president of respondent United Corporation, his representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of deviled ham in interstate commerce or in the District of Columbia, do forthwith cease and desist:

(*a*) From using the name Virginia Products Co. until and unless such deviled ham is made from the ham of hogs grown in the State of Virginia and cured by the Virginia process of curing hams.

(*b*) From furnishing to their customers and prospective customers stickers or slips designating such deviled ham as Old Virginia Deviled Ham until and unless such deviled ham is made from the ham of hogs grown in Virginia and is cured by the Virginia process.

(*c*) From invoicing from Richmond, Va., or from any other place in the State of Virginia, until and unless such deviled ham is made

from the ham of hogs grown in Virginia and is cured by the Virginia process.

(*d*) From representing orally or by any other means that such deviled ham is a Virginia product until and unless such deviled ham is made from the ham of hogs grown in Virginia and is cured by the Virginia process.

(*e*) From using the word "Virginia" in any manner or form as a name for, or as a part of the name for, such deviled ham, until and unless such deviled ham is made from the ham of hogs grown in Virginia and is cured by the Virginia process.

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

WILLIAM C. STEFFY, LORINA STEFFY, AND G. V. PARKINSON

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

Docket 3238. Complaint, Oct. 8, 1937—Decision, Aug. 2, 1939

Where two individuals engaged in sale and distribution of premium certificates, coupons and cards redeemable in silverware, chinaware and earthenware, to purchasers in various other States and the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such premiums, etc., and also with those engaged in sale and distribution, in commerce among the various States, of chinaware, silverware, and earthenware, and who do not resort to unfair practices below set forth in offering and selling their products;

In carrying on their business as above set forth, through (1) various corporations which they organized for said purpose and used solely for their benefit and as channels through which to carry on such business, and which included Security Silverware Distributors, Inc., and The United States Sales Corporation, and through (2) various trade names adopted and used by them, and including Atlas Globe China Co., Advertising Department, Rogers Silverware Distributors, Bordeaux China Co. and China Sales Syndicate, and (3) agents or salesmen employed by them in carrying on their business as aforesaid, in the name and through use of such corporate entities, and while using such trade names, personally to solicit retail dealers—

(*a*) Represented, as aforesaid and through such agents or salesmen, acting in the scope of their employment and under their direction and supervision in offering and selling said premiums, etc., to prospective purchasers, that Security Silverware Distributors, Inc., was the agent of or connected with the International Silverware Co. or some other manufacturer, and that the Atlas Globe China Co., Advertising Department, was agent for or representative of some other manufacturer of china, and that the Bordeaux China Co. was manufacturer of such products and earthenware, and that the United States Sales Corporation and Rogers Silverware Bureau were agent for and connected with the Simon L. and George H. Rogers Co., manufacturers of Rogers Silverware, and that China Sales Syndicate was manufacturer of chinaware and earthenware, and that they were agents for or connected with said manufacturers, facts being they did not, either as individuals nor while carrying on such business through use and in name of any of the above described corporate entities, or while operating under any of various aforesaid trade names adopted, manufacture silverware, chinaware or earthenware, and they were not, in any of their capacities, connected in any manner with any manufacturer or manufacturers of such products, except as purchasers thereof.

(*b*) Represented that each and all of said manufacturers had adopted the premium certificates, coupons, or cards sales plan as a method of advertising, and that they were the authorized agents of said manufacturers

or a branch thereof, facts being as above set forth, and that said premium certificate, coupon, and card plan sold by them was not an advertising method adopted by such manufacturers of silverware, chinaware, and earthware, but a scheme promulgated by them to sell such products and through which, as below more fully set forth, they were able to get distributed among the public numerous incomplete sets thereof, with each holder of such a set thus becoming a prospective customer for sufficient quantity of their products to fill out the same;

(*c*) Represented that such certificates, coupons or cards would be redeemed by them when returned by the holders in "genuine Rogers 1847 Silverware" or "Rogers Silverware", or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware," and that the chinaware and earthenware for which such premium certificates, coupons or cards were redeemable was such product, as the case might be, of highest grade and quality, facts being they did not redeem said certificates, etc., with such "genuine 1847 Rogers Silverware" or other silverware as above set forth, or with any high-grade silverware, or with chinaware and earthenware of same quality and grade as that displayed to prospective purchaser by agents in offering and selling said certificates, etc., they had adopted practice of not redeeming such certificates, and, when they did so redeem them, did so with silverware or other product, as above noted, of very inferior grade and quality;

(*d*) Represented that they would redeem such certificates, coupons, or cards without any additional cost to purchaser or purchaser's customers, and that they would refund to dealer either $4.50 or $5, depending on particular contract, and that when purchaser's premium certificates, etc., were exhausted, they would supply him with redeemed certificates, etc., without cost, facts being they had adopted practice of not refunding any amount to purchaser of such certificates, etc., contracts for purchase of which were in every instance artfully drawn so as to mislead and deceive purchaser thereof as to their terms and conditions, and in such a manner as to enable them to deprive purchasers of any benefits from the transaction, and with certain contracts stating that certificates, etc., would be redeemed according to terms written on such certificates, etc., and under which purchaser learned, upon receipt thereof, it was necessary, in order for same to be redeemed, to transmit to them stipulated amount of money with each certificate, or amount to be fixed by them for "packing and the cost of transportation," and with amount required in such cases more than actual value and customary price of silverware, chinaware, and earthenware of same grade and quality;

(*e*) Represented that they would furnish full sets of silverware, chinaware or earthenware, as case might be, to purchaser for display purposes, and to become his property after display for specified length of time, and that dealer approached by their agent had been selected by them to distribute such certificates, etc., and that only one dealer would be sold in a trade territory or area, and that they would send to purchaser's customers circulars and other advertising matter, facts being only literature sent out were circulars containing cuts of premiums and schedules showing under what terms said certificates would be redeemed, and they did not specifically select certain retailers to purchase such premium certificates, etc., but sold them wherever they could find a purchaser, and sold more than one dealer in specified area or trade territory;

With capacity and tendency to mislead and deceive purchasing public through such various highly deceptive, false, and misleading representations, and with effect of leading substantial portion of said public into false and erroneous belief that all said representations were true, and into belief that they were an agent for or connected with International Silver Co. or some manufacturer or manufacturers, as hereinabove set forth and indicated, and that purchasers of said certificates, etc., were dealing directly with the manufacturer, etc., and that they would redeem such certificates as above set forth, and would carry out undertakings as indicated, and that manufacturers of said various products had adopted premium certificates, coupons, and card plan as method of advertising, and with result, as direct consequence of mistaken and erroneous beliefs induced by said acts and practices, that portion of purchasing public bought substantial amount of their product and trade was unfairly diverted to them from their competitors; to the injury of competition in commerce; and

Where said individuals, using said United States Sales Corporation as a channel through which to carry on business of selling and distributing radios and lottery schemes to retail merchants in the various States and in the District of Columbia—

(*f*) Sold and distributed to such merchants radios and lottery schemes, and paraphernalia and devices for carrying out said schemes and distribution thereby of such radios by chance, under plan whereby merchant was to distribute among his customers, with each purchase of given amount, one of large number of keys supplied him along with padlock, with customer securing by chance particular key fitting padlock to receive one of the radios being thus distributed, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of such products in accordance with such plan, contrary to the established policy of the United States and the laws of many of the States, and in competition with many who are unwilling to offer or sell their merchandise so as to involve game of chance, and refrain therefrom;

With result that retail merchants, of whom many will not resort to use of a lottery or any other method of trade involving game of chance or sale of a chance to win radios or any other merchandise by chance, as contrary to public policy as above set forth and to State laws, and as involving methods detrimental to public morals and those of persons among whom said chances are distributed, were attracted, in many instances, by element of chance involved in their said sales methods, and were thereby induced to purchase their said merchandise and participate in said plan in preference to same or similar merchandise from their competitors who do not use such or equivalent methods in selling and distributing their products, and with effect of unfairly diverting trade in commerce to them from their competitors aforesaid, and with tendency and capacity to lessen competition in said trade and to deprive purchasing public of benefits of free competition therein; and

Where said individuals engaged, as above set forth, in carrying on their business as aforesaid, and through agents and salesmen thereunto duly authorized—

(*g*) Represented to retailers that said lottery plan or scheme, as above set out, was a sales promotion plan devised by them to get their radios before the public, and that retailer participating might do so without cost, in that

price to retailer, including merchandise given as a prize, equivalent to 1 cent per key for those furnished, would be refunded to them at same rate for each key returned when prize merchandise had been distributed, and that retailer thereafter would have agency for and receive commission on sale of their said radios in his particular territory, and that they would send representative to deliver material and paraphernalia in question and inaugurate said plan and circularize purchaser's customers with advertisements advertising scheme, and that only one key in each lot would unlock padlock, and that retail prices of radios supplied, and thus tagged by them, ranged from $24.90 to $39.99, and advised prospective purchasers, through said agents and salesmen, that term "prevailing cost" in contracts employed meant cost of 1 cent per key as paid by retailer at time of purchase;

Facts being said scheme was not a sales promotion plan as above set forth, but one to dispose of their products to retailers, they failed and refused to redeem keys at aforesaid rate and to return to retailers all or substantial part of money paid them, construed term "prevailing cost" as cost of keys to them, amounting to from 70 cents to $1 a thousand, did not deliver padlock, keys, and radios included in transaction through representatives, but sent same through mail or by express, c. o. d., did not send representative to inaugurate or conclude plan or circularize retailer's customers or advertise plan, not one but several keys in each lot thereof fitted padlock, with practically every one, in many instances, opening the same, radios in question did not retail for such sum, and retailers had no opportunity prior to payment in full, following initial deposit required, and c. o. d. shipment prior to inspection, to learn that representations as aforesaid were false;

With effect of misleading purchasing public into erroneous belief that said representations were true, and that said lottery plan was a sales promotion plan devised as above set forth, that retailers participating therein might do so without cost, and that they, said individuals, would refund amounts as promised and otherwise carry out their undertakings and representations, and that the facts in other respects were as represented, and of causing many retailers to believe that such representations were true, and of causing substantial portion thereof to participate in said plan and purchase merchandise from them because of such erroneous belief, and of thereby unfairly diverting substantial trade in commerce to them from their competitors who truthfully represent their merchandise and sales plans; to the injury of said competition in commerce, and that of the public:

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

Before *Mr. Robert S. Hall*, trial examiner.
Mr. James L. Fort for the Commission.
Hickey & Hall, 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 William C. Steffy, Lorina Steffy, and G. N. Parkinson, 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 William C. Steffy, Lorina Steffy, and G. N. Parkinson are individuals and the principal place of business of said respondents is 549 West Washington Boulevard, Chicago, Ill. Respondents are now, and have been for a number of years last past, engaged in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of premium certificates, coupons, and cards redeemable in silverware, chinaware, and earthenware. Respondents cause such certificates, coupons, and cards and the silverware, chinaware, and earthenware with which such certificates, coupons and cards are redeemable to be shipped and transported from respondents' place of business in Illinois to purchasers thereof located in various other States of the United States and the District of Columbia, and they maintain a constant current of trade and commerce among and between the various States of the United States and the District of Columbia in the sale and distribution of said products.

PAR. 2. 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 individuals, and with corporations, partnerships, and firms likewise engaged in the sale and distribution of premiums, certificates, coupons, and cards. Respondents are also in competition with other individuals, and with corporations, partnerships, and firms engaged in the sale and distribution in commerce among and between the various States of the United States of chinaware, silverware, and earthenware and these competitors of respondents do not resort to the unfair practices herein set forth in offering for sale and selling their products.

PAR. 3. Respondents William C. Steffy, Lorina Steffy, and G. N. Parkinson have, for carrying on said business as aforesaid, organized various and sundry corporations and have adopted and used various and sundry trade names. Among said corporations so organized by respondents are Security Silverware Distributors, Inc., and The United States Sales Corporation. Among the various and sundry trade names adopted and used by respondents in carrying on said business are the Atlas Globe China Co., Advertising Department, Rogers Silverware Distributors, Bordeaux China Co., and China

Sales Syndicate. Respondents organized said corporations and do now, and have at all times since the organization of said corporations, owned practically all the capital stock of said corporations and do now and have at all times herein mentioned dominated, directed, and controlled said corporations in their activities, and have and do now control and direct all their sales policies and business operations. Said corporate entities are used solely for the benefit of respondents and as channels through which respondents can carry on the business herein described. All the acts and practices herein, described whether done and performed under or in the name of said corporate entities, or under the various trade names adopted and used are in truth and in fact the acts and practices of respondents or done and performed under the immediate direction and supervision of, and for the sole benefit of, respondents.

PAR. 4. It has been, and is, the practice of respondents, when carrying on their business in the name and through the use of said corporate entities, and while using the said trade names, to employ agents or salesmen to personally solicit retail dealers. Said agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondents, while offering for sale and selling said premium certificates, coupons, and cards, have, and do now, represent to the prospective purchaser to induce said purchaser to purchase said certificates, coupons, cards, that:

Security Silverware Distributors, Inc., has been, or is, the agent of, or connected with the International Silverware Co., or some other manufacturer of silverware; that the Atlas Globe China Co., Advertising Department, is the agent of, or representative of, the Atlas Globe China Co., or is the agent for, or representative of some other manufacturer of chinaware; that the Bordeaux China Co. is a manufacturer of chinaware and earthenware, and respondents are the duly authorized agent of said Bordeaux China Co.; that the United States Sales Corporation and the Rogers Silverware Bureau were, and are, the agent for, and connected with, the Simon L. and George H. Rogers Co., manufacturers of Rogers Silverware; that the China Sales Syndicate is a manufacturer of chinaware and earthenware and respondents are agents for, or connected with, said manufacturers; that each and all of said manufacturers have adopted the premium certificates, coupons, or cards sales plan as a method of advertising; that respondents are the authorized agents of said manufacturers, or are a branch of said manufacturing companies or firms; that said premium certificates, coupons, or cards will be redeemed by respondents when returned by the holders in "genuine Rogers' 1847 Silverware" or "Rogers Silverware," or "genuine Rogers Sil-

verware," or "genuine Simon L. and George H. Rogers Silverware"; that the chinaware and earthenware for which said premium certificates, coupons or cards are redeemable is chinaware and earthenware of the highest grade and quality; that respondents will redeem said certificates, coupons, or cards without any additional cost to the purchaser or the purchaser's customers; that for each 1,000 certificates, coupons or cards redeemed, respondents will refund to the dealer either $4.50 or $5, the amount of refund depending on each particular contract; that when the purchasers' premium certificates, coupons, or cards are exhausted, respondents will furnish the purchaser redeemed certificates, coupons or cards without cost; that respondents will furnish full sets of silverware, chinaware, or earthenware, as the case might be, to the purchaser for display purposes, the same to become the property of the purchaser after displaying same for a specified length of time; that the dealer approached by respondents' agents has been selected by respondents to distribute said certificates, coupons, and cards, and only one dealer will be sold in a trade territory or area.

PAR. 5. All of said representations as above set out and referred to, and many other similar representations not specifically mentioned herein, are highly deceptive, false, and misleading, and had, and now have, the capacity and tendency to mislead and deceive the purchasing public, and did and do now lead a substantial portion of the purchasing public into the false and erroneous belief that all said representations are true and into the belief that:

Security Silverware Distributors, Inc., is an agent for, or connected with, International Silverware Co. or some manufacturer or manufacturers of silverware; that the Atlas Globe China Co., Advertising Department, is an agent for, or connected with, some manufacturer or manufacturers of chinaware; that the Bordeaux China Co. is an agent for, or connected with, the manufacturer or manufacturers of chinaware or earthenware; that China Sales Syndicate is an agent for, or connected with, a manufacturer or manufacturers of chinaware or earthenware; that United States Sales Corporation and Rogers Silverware Bureau are agents for, or connected with, Simon L. and George H. Rogers Co.; that the Bordeaux China Sales Co. is a manufacturer of chinaware and earthenware; that the purchasers of said certificates, coupons, or cards are dealing directly with the manufacturer; that the United States Sales Corporation and Rogers Silverware Bureau are agents for, and connected with, the Simon L. and George H. Rogers Co., of Oneida, N. Y.; that respondents will redeem said certificates, coupons, or cards with silverware, chinaware, or earthenware of the same grade and

quality as the samples displayed to the purchaser of said certificates, coupons, or cards, or of the grade and quality represented by said agents; that full sets of either chinaware, earthenware, or silverware, are furnished by respondent to the purchasers of the certificates, coupons or cards; that respondents will redeem the certificates, coupons, or cards calling for silverware, in "genuine Rogers 1847 Silverware," or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware"; that respondents will refund to the purchaser upon the redemption of said certificates, coupons, or cards $4.50 or $5 per thousand, as the case might be; that respondents will redeem said certificates, coupons, or cards in silverware, chinaware, or earthenware, without any additional cost to the purchaser or purchaser's customers; that when the purchaser has exhausted his original supply of certificates, coupons, or cards, respondents will furnish the purchaser with redeemed certificates, coupons, or cards without cost; that respondents will not sell any other retail dealer in purchaser's trade area, and that respondents will send to the purchasers' customers, circulars, and other advertising matter, and that the purchaser has been specifically selected by respondents to handle said certificates, coupons, or cards in the trade area or territory in which the purchasers' place of business is located; that the said manufacturers of silverware, chinaware, and earthenware have adopted the premium certificates, coupons, and cards plan as a method of advertising.

PAR. 6. In truth and in fact, respondents do not as individuals, nor while carrying on such business through the use and in the name of any of the above-described corporate entities, nor while operating under any of the various trade names adopted, manufacture silverware, chinaware, or earthenware, neither are respondents nor any of the corporate entities, by and through which respondents carry on said business, connected in any manner with any manufacturer or manufacturers of silverware, chinaware, or earthenware, except as purchasers of said products. Respondents do not redeem said certificates, coupons or cards with "genuine Rogers 1847 Silverware," or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware," nor with any high-grade silverware. Respondents do not redeem any of said certificates, coupons, or cards with chinaware and earthenware of the same quality and grade as the chinaware and earthenware displayed to the prospective purchaser by the respondent's agents while offering for sale and selling said certificates, coupons, or cards. When respondents do redeem any of said certificates, coupons, or cards, they do so with silverware, chinaware, and earthenware of a

very inferior grade and quality. Respondents have adopted the practice of not redeeming such certificates, coupons or cards and have adopted the practice of not refunding any amount to the purchaser of such certificates, coupons, or cards. The contracts for the purchase of said certificates, coupons, and cards are, in every instance, artfully drawn in such a manner as to mislead and deceive the purchaser of said certificates, coupons, and cards as to the terms and conditions thereof and in such a manner as to enable respondents to deprive the purchasers of said certificates, coupons, and cards of any benefits from the transaction. In some of the contracts, it is stated that certificates, coupons, or cards will be redeemed according to the terms written on the certificates, coupons, or cards—in such cases, the purchaser learns upon receipt of such certificates, coupons, or cards that in order for the customer to get them redeemed, it is necessary to transmit to the respondents a stipulated amount of money with each certificate, coupon, or card, or an amount to be fixed by respondent for "packing and the cost of transportation." The amount required in such cases is more than the actual value, and more than the customary price of silverware, chinaware and earthenware of the same grade and quality. Respondents do not circularize the purchaser's customers, and the only literature sent out are circulars containing cuts of premiums, and a schedule showing under what terms said certificates will be redeemed. Respondents do not specifically select certain retail dealers to purchase said premium certificates, coupons, or cards, but sell said certificates, coupons, or cards indiscriminately wherever they can find a purchaser, and sell more than one dealer in a specified area or trade territory. Said premium certificate, coupon and card plan, sold by respondents is not an advertising method adopted by said manufacturers of silverware, chinaware, and earthenware, but is a scheme, promulgated by respondents, to sell silverware, chinaware, and earthenware. By this plan respondents are able to get distributed among the public numerous incomplete sets of silverware, chinaware, and earthenware. Each holder of an incomplete set of silverware, chinaware, and earthenware thereby becomes a prospective customer for a sufficent quantity of respondents' product to fill out the incomplete set.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and practices of respondents as are hereinabove set out, a portion of the purchasing public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to respondents from respondents' competitors. As a result of the unfair acts and practices of respondent,

injury has been, and is now being, done to competition in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 8. In addition to the unfair acts and practices hereinabove set out, respondents, using United States Sales Corporation as a channel through which to carry on their business, have been and are now engaged in the sale and distribution of radios and lottery schemes, to retail merchants located in the various States of the United States and the District of Columbia, and have caused, and do cause, said radios and the paraphernalia for carrying on said lotteries, when sold, to be shipped and transported in commerce from respondents' place of business in Chicago, Ill., to the purchaser thereof located in States of the United States other than the State of Illinois. Respondents have maintained and do now maintain a constant current of trade in commerce in said products in and among the various States of the United States and the District of Columbia.

PAR. 9. In the course and conduct of their business as aforesaid, respondents sell and distribute, to retail merchants, radios, and to be used in connection therewith, lottery schemes, and the paraphernalia, and devices for carrying out said lottery schemes and the distribution of said radios by chance. In carrying on said business, respondents sell to the retail merchant a lottery scheme whereby the retail merchant is to receive a padlock and a number of keys, the number of keys being, in practically every instance, 3,950. Said keys are distributed by the retail merchant among his customers—one key being given with each purchase of a given amount of merchandise, said amount to be fixed by the retail merchant. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed among the customers of the merchant, the keys, so distributed, are collected by the merchant and fitted into the said padlock. One of the keys distributed will fit the padlock, and to the holder thereof, the merchant delivers a radio furnished by the respondents. Said radios are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondents thus supplies [sic] to and places [sic] in the hands of others, the means of conducting lotteries in the sale of its said radios in accordance with the plan hereinabove set forth. The use, by the respondents, of said method in the distribution of said radios and the sale of said radios, by and through the use thereof is a practice contrary to the established public policy of the United States and contrary to the laws of many of the States of the United States, and because of this fact 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 retail merchants are attracted by the element of chance involved in respondents' sales methods as above described and are thereby induced to purchase respondents' merchandise and participate in said plan in preference to the same or similar merchandise from respondents' competitors who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 10. The use of said lottery scheme, or game of chance, in the sale and distribution of respondents' radios in trade and commerce, had, and now has, the tendency and capacity to, and did, and does unfairly divert trade and commerce to respondents from respondents' competitors who do not use the same or similar methods. The use of said method has the tendency and capacity to lessen competition in said trade and to deprive the purchasing public of the benefits of free competition in said trade. Many retail merchants will not resort to the use of a lottery or any method of trade involving a game of chance, nor the sale of a chance to win radios, or any other merchandise by chance, because said method is contrary to the public policy of the United States and to the laws of many of the States of the United States, and because the use of such methods are detrimental to public morals and to the morals of persons among whom said chances are distributed.

PAR. 11. In the course and conduct of their business as aforesaid, respondents, through agents and salesmen, thereunto duly authorized, have represented and do now represent to retailers that the lottery plan or scheme as above set out is a sales promotion plan devised by the respondents to get their radios before the public and that the retailer participating in the plan may do so without cost, in that the respondents sell such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to 1 cent per key for the keys furnished and represent that they, the respondents, when the prize merchandise has been distributed, will pay to the retailer the sum of 1 cent for each key returned to respondents, thereby returning to the retailer all of the money paid to the respondents, if all of the keys are returned, and that the retailer thereafter will have the agency for and receive a commission on the sales of respondents' radios in the particular territory where the retailer is located; that upon the purchase of said padlock and keys and lottery scheme, by the retail merchant, respondents will send a representative to deliver said material and paraphernalia and to inaugurate said sales plan; that respondents will circularize the purchaser's customers with advertisements advertising said scheme; that in the lot of keys supplied the retail merchant there will only be one key that will unlock the padlock. Respondents further represent

that the retail prices of the radios supplied with said scheme range from $24.90 to $39.99. Respondents, before delivering said radios to the retail merchant, places [sic] price tags on said radios stating the retail price to be as above set out.

The contracts used by respondents in the sale and distribution of said radios and lottery schemes contain the following clause: "Guaranteed cash rebate at our prevailing cost, upon receipt thereof, for all keys returned at the end of campaign." Said agents and salesmen of respondents represent to the retail dealer that the term "prevailing cost" means the cost paid by the retail dealer at the time of the purchase, that is, 1 cent per key.

PAR. 12. Said representations on the part of respondents are highly exaggerated, false and misleading and had, and now have, the tendency and capacity to mislead and deceive, and did, and do mislead and deceive the purchasing public, and did and do lead them into the erroneous belief that all of said representations are true and into the belief that said lottery plan or scheme is a sales promotion plan devised by the respondents to get their radios before the public; that the retailers participating in the plan may do so without cost; that respondents will refund to the purchaser 1 cent per key for each key returned to respondents after the campaign is concluded; that the retailer will have the agency for and receive a commission on the sales of respondents' radios in the particular territory where the retailer is located; that the merchandise will be delivered by a representative of respondents; that a representative of respondents will be present and inaugurate said lottery scheme or sales plan; that respondents will circularize the retailers' customers with advertisements advertising said plan; that there is only one key in the lot of keys supplied by respondents that will unlock the padlock; that the radios supplied with said keys retail for $24.95, $29.95, and $39.95; that the term "prevailing cost" in said contract means the price paid by the retailer for said keys.

PAR. 13. In truth and in fact the lottery plan or scheme so distributed by the respondents is not a sales promotion plan to get respondents' products before the purchasing public, but is a scheme to dispose of their said products to retailers. Respondents fail and refuse to redeem the keys returned to them by the retailers participating in the plan at the rate of 1 cent each, and to return to the said retailers all, or a substantial part, of the money paid to respondents. When the retailer returns any of the keys for a refund the respondents construe the term "prevailing cost," in said contract to be the cost of said keys to respondents—the cost to the said respondents for said keys being from 70 cents to $1 per thousand. The padlock, keys, and radios, included in said transaction are not delivered to the retailers

by representatives of respondents but are sent to the retailer through the United States mail or by express, c. o. d. Respondents do not send a representative to be present at the time the plan is inaugurated or concluded. Respondents do not circularize the retailers' customers nor advertise said plan. After the retailer has distributed said keys according to said plan and the keys are returned to the retailer, the retailer learns that not only one key but several of said keys, and in many instances practically every one of said keys, will open the lock. The radios distributed by respondent do not retail for $24.95, $29.95, nor $39.95.

Retailers have no opportunity to learn prior to the time of full payment of money to the respondents, for their participation in the plan, that the representations made by the respondents are false, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer c. o. d. Full payment is made by the retailer before inspection.

PAR. 14. The aforesaid representations and implications of respondents are false and misleading, and have the tendency and capacity to, and do, cause many retailers to erroneously believe that said representations are true, and cause a substantial portion of said retailers to participate in said plan and to purchase merchandise from said respondents because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

PAR. 15. The acts, practices, and methods of 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, 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 October 8, 1937, issued, and on October 11, 1937 served, its complaint in this proceeding upon respondents William C. Steffy, Lorina Steffy, and G. V. Parkinson, charging them with using 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 the motion of respondents William C. Steffy and G. V. Parkinson for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the said facts, which substitute answer was duly filed in the office of the Commission. After the issuance of the complaint, testimony was introduced before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, relative to the acts and practices of respondent Lorina Steffy, and said testimony was 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 substitute answer of William C. Steffy and G. V. Parkinson, and the aforesaid testimony, 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. Respondents William C. Steffy and G. V. Parkinson are individuals and the principal place of business of said respondents is 549 West Washington Boulevard, Chicago, Ill. William C. Steffy and G. V. Parkinson, hereinafter referred to as respondents, are now and have been for a number of years last past, engaged in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of premium certificates, coupons, and cards redeemable in silverware, chinaware, and earthenware. Respondents cause such certificates, coupons, and cards, and the silverware, chinaware, and earthenware with which such certificates, coupons, and cards are redeemable to be shipped and transported from respondents' place of business in Illinois to purchasers thereof located in various other States of the United States and the District of Columbia, and they maintain a constant current of trade in commerce among and between the various States of the United States and the District of Columbia in the sale and distribution of said products.

PAR. 2. 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 individuals, and with corporations, partnerships, and firms likewise engaged in the sale and distribution of premiums, certificates, coupons, and cards. Respondents are also in competition with other individuals, and with corporations, partnerships,

and firms engaged in the sale and distribution in commerce among and between the various States of the United States of chinaware, silverware, and earthenware and these competitors of respondents do not resort to the unfair practices herein set forth in offering for sale and selling their products.

PAR. 3. Respondents have, for carrying on said business as aforesaid, organized various and sundry corporations, and have adopted and used various and sundry trade names. Among said corporations so organized by respondents are Security Silverware Distributors, Inc., and The United States Sales Corporation. Among the various and sundry trade names adopted and used by respondents in carrying on said business are the Atlas Globe China Co., Advertising Department, Rogers Silverware Distributors, Bordeaux China Co., and China Sales Syndicate. Respondents organized said corporations and do now, and have at all times since the organization of said corporations, owned practically all the capital stock of said corporations, and do now, and have at all times herein mentioned, dominated, directed, and controlled the said corporations in their activities, and have, and do now, control and direct all their sales policies and business operations. Said corporate entities are used solely for the benefit of respondents and as channels through which respondents can carry on the business herein described. All the acts and practices herein described, whether done and performed under or in the name of said corporate entities or under the various trade names adopted and used are in truth and in fact the acts and practices of respondents or done and performed under the immediate direction or supervision of, and for the sole benefit of, respondents.

PAR. 4. It has been, and is, the practice of respondents, when carrying on their business in the name and through the use of said corporate entities, and while using the said trade names, to employ agents or salesmen to personally solicit retail dealers. Said agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondents, while offering for sale and selling said premiums, certificates, coupons, and cards, have, and do now represent to the prospective purchaser to induce said purchaser to purchase said certificates, coupons, cards, that:

Security Silverware Distributors, Inc., has been, or is, the agent of, or connected with, the International Silverware Co., or some other manufacturer of silverware; that the Atlas Globe China Co., Advertising Department, is the agent of, or representative of, the Atlas Globe China Co., or is the agent for, or representative of some other manufacturer of chinaware; that the Bordeaux China Co. is a manufacturer of chinaware and earthenware, and respondents are the duly author-

ized agent of said Bordeaux China Co.; that the United States Sales Corporation and the Rogers Silverware Bureau were, and are, the agent for, and connected with, the Simon L. and George H. Rogers Co., manufacturers of Rogers Silverware; that the China Sales Syndicate is a manufacturer of chinaware and earthenware and respondents are agents for, or connected with, said manufacturers; that each and all of said manufacturers have adopted the premium certificates, coupons or card sales plan as a method of advertising; that respondents are the authorized agents of said manufacturers, or are a branch of said manufacturing companies or firms; that said premium certificates, coupons, or cards will be redeemed by respondents when returned by the holders in "genuine Rogers 1847 Silverware" or "Rogers Silverware" or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware"; that the chinaware and earthenware for which said premium certificates, coupons, or cards are redeemable is chinaware and earthenware of the highest grade and quality; that respondents will redeem such certificates, coupons, or cards without any additional cost to the purchaser or the purchaser's customers; that for each 1,000 certificates, coupons, or cards redeemed, respondents will refund to the dealer either $4.50 or $5, the amount of refund depending on each particular contract; that when the purchasers' premium certificates, coupons, or cards are exhausted, respondents will furnish the purchaser redeemed certificates, coupons, or cards without cost; that respondents will furnish full sets of silverware, chinaware, or earthenware, as the case might be, to the purchaser for display purposes, the same to become the property of the purchaser after displaying same for a specified length of time; that the dealer approached by respondents' agents has been selected by respondents to distribute such certificates, coupons, and cards and only one dealer will be sold in a trade territory or area.

PAR. 5. All of said representations as above set-out and referred to are highly deceptive, false, and misleading, and had, and now have, the capacity and tendency to mislead and deceive the purchasing public, and did and do now lead a substantial portion of the purchasing public into the false and erroneous belief that all said representations are true and into the belief that:

Security Silverware Distributors, Inc., is an agent for, or connected with, International Silverware Co. or some manufacturer or manufacturers of silverware; that the Atlas Globe China Co., Advertising Department, is an agent for, or connected with, some manufacturer or manufacturers of chinaware; that the Bordeaux China Co. is an agent for, or connected with, the manufacturer or manufacturers of chinaware or earthenware; that China Sales Syndicate is an agent for,

or connected with, a manufacturer or manufacturers of chinaware or earthenware; that the United States Sales Corporation and Rogers Silverware Bureau are agents for, or connected with, Simon L. and George H. Rogers Co.; that the Bordeaux China Sales Co. is a manufacturer of chinaware and earthenware; that the purchasers of said certificates, coupons, or cards are dealing directly with the manufacturer; that the United States Sales Corporation and Rogers Silverware Bureau are agents for, and connected with, the Simon L. and George H. Rogers Co., of Oneida, N. Y.; that respondents will redeem such certificates, coupons, or cards with silverware, chinaware, or earthenware of the same grade and quality as the samples displayed to the purchaser of said certificates, coupons, or cards, or of the grade and quality represented by said agents; that full sets of either chinaware, earthenware, or silverware, are furnished by respondent to the purchasers of the certificates, coupons, or cards; that respondents will redeem the certificates, coupons, or cards, calling for silverware, in "genuine Rogers 1847 Silverware," or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware"; that respondents will refund to the purchaser upon the redemption of said certificates, coupons, or cards $4.50 or $5 per thousand, as the case might be; that the respondents will redeem said certificates, coupons, or cards in silverware, chinaware, or earthenware, without any additional cost to the purchaser or purchaser's customers; that when the purchaser has exhausted his original supply of certificates, coupons, or cards, respondents will furnish the purchaser with redeemed certificates, coupons, or cards, without cost; that respondents will not sell any other retail dealer in purchaser's trade area, that respondents will send to the purchaser's customers, circulars, and other advertising matter and that the purchaser has been specifically selected by respondents to handle said certificates, coupons, or cards in the trade area or territory in which the purchaser's place of business is located; that the said manufacturers of silverware, chinaware, and earthenware have adopted the premium certificates, coupons, and cards plan as a method of advertising.

PAR. 6. In truth and in fact, respondents do not as individuals, nor while carrying on such business through the use and in the name of any of the above-described corporate entities, nor while operating under any of the various trade names adopted, manufacture silverware, chinaware, or earthenware, neither are respondents nor any of the corporate entities, by and through which respondents carry on said business, connected in any manner with any manufacturer or manufacturers of silverware, chinaware, or earthenware, except as purchasers of said products. Respondents do not redeem said certificates,

coupons or cards with "genuine Rogers 1847 Silverware," or "genuine Rogers Silverware," or "genuine Simon L. and George H. Rogers Silverware," nor with any high-grade silverware. Respondents do not redeem any of said certificates, coupons, or cards with chinaware and earthenware of the same quality and grade as the chinaware and earthenware displayed to the prospective purchaser by the respondents' agents while offering for sale and selling said certificates, coupons, or cards. When respondents do redeem any of said certificates, coupons, or cards, they do so with silverware, chinaware, and earthenware of a very inferior grade and quality. Respondents have adopted the practice of not redeeming such certificates, coupons, or cards and have adopted the practice of not refunding any amount to the purchaser of such certificates, coupons, or cards. The contracts for the purchase of said certificates, coupons, and cards are, in every instance, artfully drawn in such a manner as to mislead and deceive the purchaser of said certificates, coupons, and cards as to the terms and conditions thereof and in such a manner as to enable respondents to deprive the purchasers of said certificates, coupons, and cards of any benefits from the transaction. In some of the contracts, it is stated that certificates, coupons, or cards will be redeemed, according to the terms written on the certificates, coupons, or cards—in such cases, the purchaser learns upon receipt of such certificates, coupons, or cards that in order for the customer to get them redeemed, it is necessary to transmit to the respondents a stipulated amount of money with each certificate, coupon, or card, or an amount to be fixed by respondent for "packing and the cost of transportation." The amount required in such cases is more than the actual value, and more than the customary price of silverware, chinaware, and earthenware of the same grade and quality. Respondents do not circularize the purchaser's customers, and the only literature sent out are circulars containing cuts of premiums, and a schedule showing under what terms said certificates will be redeemed. Respondents do not specifically select certain retail dealers to purchase said premium certificates, coupons, or cards, but sell said certificates, coupons, or cards indiscriminately wherever they can find a purchaser, and sell to more than one dealer in a specified area or trade territory. Said premium certificate, coupon, and card plan, sold by respondents is not an advertising method adopted by said manufacturers of silverware, chinaware, and earthenware, but is a scheme, promulgated by respondents, to sell silverware, chinaware, and earthenware. By this plan respondents are able to get distributed among the public numerous incomplete sets of silverware, chinaware, and earthenware. Each holder of an incomplete set of silverware, chinaware,

and earthenware thereby becomes a prospective customer for a sufficient quantity of respondents' product to fill out the incomplete set.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and practices of respondents as are hereinabove set-out, a portion of the purchasing public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to respondents from respondents' competitors. As a result of the unfair acts and practices of respondents, injury has been, and is now being, done to competition in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 8. In addition to the unfair acts and practices hereinabove set-out, respondents, using United States Sales Corporation as a channel through which to carry on their business, have been and are now engaged in the sale and distribution of radios and lottery schemes, to retail merchants located in the various States of the United States and the District of Columbia, and have caused, and do cause, said radios and the paraphernalia for carrying on said lotteries, when sold, to be shipped and transported in commerce from respondents' place of business in Chicago, Ill., to the purchaser thereof located in States of the United States other than the State of Illinois. Respondents have maintained and do now maintain a constant current of trade in commerce in said products in and among the various States of the United States and the District of Columbia.

PAR. 9. In the course and conduct of their business as aforesaid, respondents sell and distribute, to retail merchants, radios, and to be used in connection therewith, lottery schemes, and the paraphernalia and devices for carrying out said lottery schemes and the distribution of said radios by chance. In carrying on said business, respondents sell to the retail merchant a lottery scheme whereby the retail merchant is to receive a padlock and a number of keys, the number of keys being, in practically every instance, 3,950. Said keys are distributed by the retail merchant among his customers—one key being given with each purchase of a given amount of merchandise, said amount to be fixed by the retail merchant. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed among the customers of the merchant, the keys, so distributed, are collected by the merchant and fitted into the said padlock. One of the keys distributed will fit the padlock, and to the holder thereof, the merchant delivers a radio furnished by the respondents. Said radios are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondents thus supply to and place in the hands of others, the means of conducting lotteries in the sale of its said radios in accordance with the plan hereinabove set forth. The use, by the respondents, of said method in the distribution of said radios and the sale of said radios, by and through the use thereof is a practice contrary to the established public policy of the United States and contrary to the laws of many of the States of the United States, and because of this fact 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 retail merchants are attracted by the element of chance involved in respondents' sales methods as above described, and are thereby induced to purchase respondents' merchandise and participate in said plan in preference to the same or similar merchandise from respondents' competitors who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 10. The use of said lottery scheme, or game of chance, in the sale and distribution of respondents' radios in trade and commerce, had, and now has, the tendency and capacity to, and did, and does, unfairly divert trade and commerce to respondents from respondents' competitors who do not use the same or similar methods. The use of said method has the tendency and capacity to lessen competition in said trade and to deprive the purchasing public of the benefits of free competition in said trade. Many retail merchants will not resort to the use of a lottery or any method of trade involving a game of chance, nor the sale of a chance to win radios, or any other merchandise by chance, because said method is contrary to the public policy of the United States and to the laws of many of the States of the United States, and because the use of such methods are detrimental to public morals and to the morals of persons among whom said chances are distributed.

PAR. 11. In the course and conduct of their business as aforesaid, respondents, through agents and salesmen, thereunto duly authorized, have represented, and do now represent, to retailers that the lottery plan or scheme as above set-out is a sales-promotion plan devised by the respondents to get their radios before the public and that the retailer participating in the plan may do so without cost, in that the respondents sell such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to 1 cent per key for the keys furnished and represent that they, the respondents, when the prize merchandise has been distributed, will pay to the retailer the sum of 1 cent for each key returned to respondents, thereby returning to the retailer all of the money paid to the respondents,

if all of the keys are returned, and that the retailer thereafter will have the agency for and receive a commission on the sales of respondents' radios in the particular territory where the retailer is located; that upon the purchase of said padlock and keys and lottery scheme, by the retail merchant, respondents will send a representative to deliver said material and paraphernalia and to inaugurate said sales plan; that respondents will circularize the purchaser's customers with advertisements advertising said scheme; that in the lot of keys supplied the retail merchant there will only be one key that will unlock the padlock. Respondents further represent that the retail prices of the radios supplied with said scheme range from $24.90 to $39.99. Respondents, before delivering said radios to the retail merchant, places price tags on said radios stating the retail price to be as above set-out.

The contracts used by respondents in the sale and distribution of said radios and lottery schemes contain the following clause: "Guaranteed cash rebate at our prevailing cost, upon receipt thereof, for all keys returned at end of campaign." Said agents and salesmen of respondents represent to the retail dealer that the term "prevailing cost" means the cost paid by the retail dealer at the time of the purchase, that is, 1 cent per key.

PAR. 12. Said representations on the part of respondents are highly exaggerated, false, and misleading and had, and now have, the tendency and capacity to mislead and deceive, and did, and do mislead and deceive the purchasing public, and did and do lead them into the erroneous belief that all of said representations are true and into the belief that said lottery plan or scheme is a sales-promotion plan devised by the respondents to get their radios before the public; that the retailers participating in the plan may do so without cost; that respondents will refund to the purchaser 1 cent per key for each key returned to respondents after the campaign is concluded; that the retailer will have the agency for and receive a commission on the sales of respondents' radios in the particular territory where the retailer is located; that the merchandise will be delivered by a representative of respondents; that a representative of respondents will be present and inaugurate said lottery scheme or sales plan; that respondents will circularize the retailers' customers with advertisements advertising said plan; that there is only one key in the lot of keys supplied by respondents that will unlock the padlock; that the radios supplied with said keys retail for $24.95, $29.95, and $39.95; that the term "prevailing cost" in said contract means the price paid by the retailer for said keys.

PAR. 13. In truth and in fact the lottery plan or scheme so distributed by the respondents is not a sales-promotion plan to get respondents' products before the purchasing public, but is a scheme to dispose of their said products to retailers. Respondents fail and refuse to redeem the keys returned to them by the retailers participating in the plan at the rate of 1 cent each, and to return to the said retailers all, or a substantial part, of the money paid to respondents. When the retailer returns any of the keys for a refund the respondents construe the term "prevailing cost," in said contract to be the cost of said keys to respondents—the cost to the said respondents for said keys being from 70 cents to $1 per 1,000. The padlock, keys, and radios, included in said transaction are not delivered to the retailers by representatives of respondents but are sent to the retailer through the United States mail or by express, c. o. d. Respondents do not send a representative to be present at the time the plan is inaugurated or concluded. Respondents do not circularize the retailers' customers nor advertise said plan. After the retailer has distributed said keys according to said plan and the keys are returned to the retailer, the retailer learns that not only 1 key, but several of said keys, and in many instances practically every one of said keys, will open the lock. The radios distributed by respondent do not retail for $24,95, $29.95, nor $39.95.

Retailers have no opportunity to learn prior to the time of full payment of money to the respondents, for their participation in the plan, that the representations made by the respondents are false, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer c. o. d. Full payment is made by the retailer before inspection.

PAR. 14. The aforesaid representations and implications of respondents are false and misleading, and have the tendency and capacity to, and do, cause many retailers to erroneously believe that said representations are true, and cause a substantial portion of said retailers to participate in said plan and to purchase merchandise from said respondents because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

PAR. 15. The respondent, Lorina Steffy, took no part in the business activities complained of in the instant proceeding, other than acting in a purely formal capacity in connection with the organization of certain of the corporations mentioned herein.

CONCLUSION

The aforesaid acts and practices of respondents as herein found 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 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 respondents William C. Steffy and G. V. Parkinson, in which said respondents admit all of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and upon the testimony taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, relative to the acts and practices of respondent Lorina Steffy, and the Commission having made its findings as to the facts and its conclusion that respondents William C. Steffy and G. V. Parkinson have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William C. Steffy and G. V. Parkinson, individually and trading as Atlas Globe China Co., Advertising Department, Rogers Silverware Distributors, Bordeaux China Co., or China Sales Syndicate, or trading under any other name or names, or trading through the corporations Security Silverware Distributors, Inc., United States Sales Corporation, or through any other corporation or corporations, their representatives, agents, and employees, directly or through any other corporate or other device, in connection with the offering for sale, sale and distribution of silverware, earthenware, chinaware, radios, or sales-promotional plans, including premium certificates, coupons, cards. or other and similar devices redeemable in silverware, earthenware, chinaware, or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the term "Rogers Silverware" either alone or in connection with any other term or terms in a corporate or trade name, or in any other manner, that respondents have an interest in, form a part of, or have any connection with, the manufacturers of Simon L. and George H. Rogers Silverware, or from representing in any manner that respondents have an interest in, form a part of, or have any connection with the International Silverware Co., the Atlas Globe China Co. or any other manufacturer or manufacturers of silverware, chinaware, or earthenware.

2. Representing through the use of the term "Rogers Silverware" either alone or in connection with any other term or terms, or in any other manner, that premium certificates, cards, coupons, or other and similar devices can be redeemed in silverware manufactured by the manufacturers of Simon L. and George H. Rogers Silverware, or can be redeemed in any other silverware or other merchandise, unless and until such are the facts and unless all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with said offer and there is no deception as to the price, quality, character, or any other feature of such silverware or other merchandise or as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other merchandise.

3. Representing that respondents are conducting any special campaign or advertising campaign to introduce, advertise, or sell any article or articles of merchandise on behalf of a manufacturer or manufacturers of silverware, earthenware, or chinaware, or any other manufacturer or concern unless such a campaign is in fact being conducted at the instance of and on behalf of such manufacturer or concern.

4. Representing that respondents sell premium certificates, cards, coupons, or other and similar devices or other merchandise in any territory or locality exclusively to any purchaser therein unless and until such is the fact.

5. Representing that respondents will refund the sum of $4.50 or any other sum to the purchasers of premium certificates, cards, coupons, or other and similar devices or that the respondents will supply to their customers without charge display sets of silverware or other merchandise to become the property of such customers unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed by such purchasers or customers in connection with obtaining such refund and display set of silverware or other merchandise.

6. Representing that the retail price of radios is $24.90 or $39.99 or any other amount or amounts unless and until said radios are customarily and ordinarily sold at retail at such amount or amounts.

7. Supplying to, or placing in the hands of, others said radios or other merchandise together with a padlock and a number of keys which said padlock and keys are to be used or may be used to conduct

a lottery, gaming device, or gift enterprise in the sale or distribution of said radios or other merchandise to the general public.

8. Selling or otherwise disposing of any merchandise by means of a lottery, game of chance, or a gift enterprise.

9. Supplying to, or placing in the hands of, others any lottery device, game of chance, or a gift enterprise so as to enable such persons to dispose of or sell any merchandise by the use thereof.

It is further ordered, That this proceeding insofar as it relates to respondent Lorina Steffy, be and the same hereby is, closed without prejudice.

It is further ordered, That the respondents, William C. Steffy and G. V. Parkinson, 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

ISADORE H. LUKACHER, TRADING AS CASA BLANCA CIGAR COMPANY AND BELVEDERE TOBACCO COMPANY, AND BERT LUKACHER

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

Docket 3589. Complaint, Sept. 15, 1938—Decision, Aug. 2, 1939

Where (1) word "Havana," or "Habana," when used to refer to or describe tobacco, had been used and understood since time immemorial by cigar manufacturers and dealers and by cigar-consuming public as designating or referring to tobacco grown on Island of Cuba, where is grown cigar tobacco of finest quality, and such Havana tobacco had long been imported into the United States and extensively used and consumed in cigars made in whole or in part therefrom, and had reputation among cigar dealers and cigar-consuming public as cigar tobacco of highest quality and excellence, and last word in quality, aroma, and taste, and cigars made therefrom were in large demand throughout the United States, and cigars containing same were purchased by many of said public in belief that use thereof in cigars added to and increased their quality and desirability, and word "Havana" used as cigar band or label indicated to trade and public clear Havana cigar, or one made entirely of Havana leaf, and was thus used by reputable cigar manufacturers only with such cigars, and term "Havana blend," used in connection with cigar, indicated to trade and consuming public that such cigar contained percentage of Havana leaf or tobacco grown on Island of Cuba; and where (2) term "Vuelta Abajo" was name of district in Cuba, tobacco of which had long been considered by cigar trade and consuming public as of higher and more desirable quality than any other tobacco, and cigars of which were purchased by many of said public in preference to those made from tobacco grown elsewhere, and said term, when used as brand for cigars, signified to trade and public alike very high-grade Havana tobacco; and where (3) expressions "Cuban workmanship" and "made in Tampa" on cigar box container indicated to trade and public high-grade cigar made in Cuban style at Tampa, in which city and immediately surrounding territory, or Tampa District, had long been made cigars manufactured principally from tobacco grown in and imported from Cuba and widely and favorably known as "Tampa cigars"; and

Thereafter, individual, with principal office and place of business in Pennsylvania, and there engaged in manufacturing various brands of cigars and in selling and distributing same to jobbers, chain establishments, and retailers throughout the United States, and son of said individual, associated with him in aforesaid business and participant with him in active management and control thereof, and in formulating its policies as below set forth, and who branded their cigars with various names, to retail at 10 cents or 5 cents, as case might be, depending upon particular brand or label used, and who, as aforesaid engaged, were in competition with others also engaged in manufacture, sale, and distribution of cigars in

commerce, including those who truthfully represent place of origin of tobacco used in their respective cigars, place of manufacture thereof, method of manufacturing, and quality and character of their said products;

In making use of various brand names, labels, and other designations purporting to be descriptive of the nature, quality, and character of their said product—

(*a*) Made use, among others, in connection with their "Garcia Delight" brand of cigars, of label used on each cigar which read "Garcia Delight—Havana," and set forth on inside lid of container for said brand, in sizeable type and conspicuously displayed with lid open, statements "Havana blend," "10¢ Straight," "Cuban workmanship," and "made in Tampa," and represented thereby, as understood by trade and public from aforesaid expressions as thus used and displayed, that cigars therein contained were of Cuban workmanship and, as such, expensive, since such workmanship is all by hand, and that cigar filler was worked out in a Cuban method known to trade, and that said cigar had Havana tobacco in the blend, and that product was made in Tampa, and, as respects aforesaid label designation with word "blend" lacking therefrom, that individual cigars thus banded were made of clear or all Havana;

(*b*) Made use, as aforesaid, and in connection with their "Garcia Supreme" brand, in sizeable type and appearing conspicuously when lid of container was lifted, of statements "Havana blend," "hand made," "exceptional quality" and represented thereby and by words "after dinner," as understood as aforesaid, that said cigars were still made by the famous Garcia family, and that there was a certain percentage of Havana tobacco therein contained;

(*c*) Made use, as aforesaid, in connection with their "San Vega" brand, of words, on outside of container and in sizeable and easily legible type, "Vuelta Havana," along with depiction of tobacco field and tropical palms, and displayed said words also around the inner edges of the container, and set forth conspicuously on inside of box top words "Havana blend" and "hand made," together with depiction of field and palms as above set forth, and displayed elsewhere on said container said words "Vuelta Havana," and represented, through depiction of Spanish plantation, words "Vuelta Havana" and words "primeras," "exquisitos," and "selectos tobaccos," that said cigars were clear Havana; and

(*d*) Made use, as aforesaid, in connection with their "Havana Imperial" brand, of label on each cigar setting forth said words and depiction of tropical palms, and displayed said words conspicuously in white and gold lettering on outside of lid of containers of said brand, and set them forth also with depiction as above described at various other places on the outside and inside of such container, and represented thereby that said cigars were clear Havana;

Facts being they did not import from Cuba or any other foreign country any of the tobacco used in the manufacture of the cigars which they branded and labeled as above set forth, but, as stated by them, made said cigars from scrap tobacco of which one-fifth, neither bought nor sold as Havana tobacco, was purchased from manufacturers using Havana tobacco in making of cigars retailing for 5 and 10 cents, and they did not purchase or use in the manufacture of their said cigars any Havana tobacco as such, or any tobacco which could be designated or identified as Havana tobacco with any reasonable degree of certainty, their cigars were made by hand,

they had no machinery and did not make any of their cigars by or with Cuban workmanship, and their said cigars, referred to as above as made in Tampa, were not there made;

With effect of misleading and deceiving many dealers and members of purchasing public into erroneous and mistaken beliefs that said representations were true, and into purchase of substantial quantities of their said products in and on account of such beliefs thus induced, and of thereby diverting trade in commerce unfairly to them from competitors who do not misrepresent the nature, quality, or character of the tobacco used in their cigars, and who do not otherwise misrepresent their products; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.
Mr. Marshall Morgan for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Isadore H. Lukacher, an individual, trading as Casa Blanca Cigar Co. and as Belvedere Tobacco Co., and Bert Lukacher, an individual, hereafter referred to as respondents, have violated the provisions of the 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 Isadore H. Lukacher is an individual doing business under the names Casa Blanca Cigar Co. and Belvedere Tobacco Co. with his principal office and place of business at York, Pa. He is now, and for more than 3 years last past has been, engaged in manufacturing various brands of cigars and in selling and distributing the same to jobbers, chain establishments, and retailers throughout the United States.

Respondent Bert Lukacher is the son of Isadore H. Lukacher and for some 6 years last past has been associated in the aforesaid business. Respondent Isadore H. Lukacher is the owner of the business operated as above described and respondent Bert Lukacher participates in the active management and control of the business and in formulating its policies as hereinafter alleged. Respondents maintain, and for several years last past have maintained, a course of trade in said cigars so sold and distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In consummating the sale and distribution of their products, the respondents cause said cigars to be transported and delivered from their aforesaid place of business in York, Pa., through and into various other States to the respective purchasers thereof at their respective points of location in States of the United States other than the State of Pennsylvania.

In the course and conduct of said business, the respondents have been, and are now, in competition with various other individuals and with corporations and partnerships also engaged in the manufacture and in the sale and distribution of cigars in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of said business, and for the purpose of inducing the purchase of their products by the consuming public, the respondents have made use of various brand names, labels, and other designations purporting to be descriptive of the nature, quality, and character of said cigars. The hereinafter described brand names and labels for individual cigars and cigar containers, among others, have been variously used by respondents in connection with the sale of their cigars in the manner hereinabove described.

In connection with a brand of cigars designated by respondents as "Garcia Delight" a label is used on each cigar which reads "Garcia Delight—Havana." On the inside lid of the container for this brand of cigars there appear the following statements: "Havana blend," "10¢ straight," "Cuban workmanship," and "made in Tampa." These statements are all printed in sizeable type and are conspicuously displayed when the lid of the container is opened.

In connection with a brand of cigars designated by respondents as "Garcia Supreme," the container has branded thereon the following statements: "Havana blend," "hand made," and "exceptional quality." These statements are printed in sizeable type and appear conspicuously when the lid of the container is lifted.

In connection with the brand of cigars designated by respondents as "San Vega," there appear on the outside of the container therefor the words "Vuelta Havana" in sizeable type which is easily legible, together with a pictorial representation of a tobacco field and tropical palms. The words "Vuelta Havana" also appear similarly around all the outer edges of said container. On the inside of the box top appear the words "Havana blend" and "hand made" printed in letters of sizeable type which show conspicuously when the lid is lifted, together with a pictorial representation of a tobacco field and tropical palms. At the back of said container, near the top thereof, in conspicuous type also appear the words "Vuelta Havana."

In connection with a brand of cigars designated by respondents as "Havana Imperial" a label is used on each cigar which reads "Havana Imperial" and which also contains a pictorial representation of tropical palms. On the outside of the lid of the containers in which this brand is placed appear the words "Havana Imperial" in conspicuous white and gold colored lettering. The words "Havana Imperial," together with a pictorial representation of tropical palms, appear at various other places on the outside and inside of said container.

PAR. 4. Through use of the various brand-name designations for its said cigars and the various labels appearing on said cigars and on the containers thereof, as hereinabove set-out, the respondents have represented (1) as to the "Garcia Delight" brand that said cigars are made in Tampa, are hand-made by Cuban workmen, are made from a blend of tobaccos containing a substantial quantity of Havana tobacco, and are of such quality as to be regularly sold for 10 cents each; (2) as to the "Garcia Supreme" brand that said cigars are of exceptional quality, are hand-made and are made from a blend of tobaccos containing a substantial quantity of Havana tobacco; (3) as to the "San Vega" brand that said cigars are made from a blend of tobaccos containing a substantial quantity of Havana tobacco, are hand-made and that said cigars contain a substantial quantity of tobacco grown in the Vuelta Abajo district of Cuba; (4) as to the "Havana Imperial" brand that said cigars are made from Havana tobacco.

PAR. 5. In truth and in fact, none of the cigars manufactured and sold and distributed by the respondents to the public, in the manner hereinabove described, under the trade names or brands of "Garcia Delight," "Garcia Supreme," "San Vega," and "Havana Imperial" contain any Havana or Cuban tobacco whatsoever. The tobacco used by respondents in the manufacture of said cigars so branded, labeled, and described, as hereinabove set-out, is actually grown principally in the State of Pennsylvania and consists largely of "throw-off" material, or cuttings or clippings, from various large cigar manufacturing establishments. The cigars manufactured and sold by the respondents from such material are produced from the same tobacco scrap, cuttings, or clippings, irrespective of the price at which said cigars are sold to the consuming public and irrespective of the particular brand name under which they are sold. None of said cigars are made in Tampa or by Cuban workmen. On the contrary, said cigars are made in respondents' factory in York, Pa. Said cigars are not hand-made and they do not have the quality and workmanship

generally attributed to and associated with genuine hand-made cigars. Such cigars do not contain the quality or type of tobacco employed in the manufacture of cigars ordinarily and regularly selling at retail for 10 cents each and said cigars are not of the quality and standard recognized as 10-cent cigars.

PAR. 6. The cigar originated in the Spanish West Indies and the finest quality of tobacco for cigar-making purposes is grown in Cuba, not far from the city of Havana. The word "Havana" or "Habana," when used to refer to or to describe tobacco, has been used and understood since time immemorial by cigar manufacturers and dealers and by the cigar-consuming public as designating or referring to tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and extensively used and consumed in cigars manufactured in whole or in part from such tobacco. Such Havana tobacco has the reputation among cigar dealers and the cigar-consuming public as being cigar tobacco of the highest quality and excellence and cigars made from such tobacco are in large demand throughout the United States. Many of the consuming public prefer to purchase cigars containing Havana tobacco, believing that the use of such tobacco in cigars adds to and increases the quality and desirability thereof.

Vuelta Abajo is a district in the province of Pinar Del Rio, Cuba. Tobacco grown in the Vuelta Abajo district has long been considered by the cigar trade and consuming public to be of a higher and more desirable quality for use in cigars than any other tobacco grown in the Island of Cuba or elsewhere. Many of the consuming public prefer to purchase cigars made from tobacco grown in the Vuelta Abajo district to cigars made from tobacco grown anywhere else in the world.

The words "hand made" when applied to cigars have meant and still mean to the trade and to the purchasing public that such cigars are entirely made by hand. Genuine hand-made cigars usually smoke more evenly and freely than machine-made cigars, are made by operators possessing long experience and great skill, and enjoy a wide reputation for their excellence. There is a preference on the part of a large portion of the cigar-smoking public for cigars that are in fact hand-made. A Cuban hand-made cigar is a cigar made in Cuba by one operator.

For nearly 50 years cigars have been made in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District. Such cigars are known and referred to as "Tampa cigars" and are manufactured principally from tobacco grown in and imported from the Island of Cuba. Such cigars so

made in said city and district of Tampa have acquired a wide and favorable reputation.

PAR. 7. Among the competitors of respondents, referred to in paragraph 2 hereof, there are many who truthfully represent the place of origin of the tobacco used in their respective cigars, the place of manufacture thereof, the method of manufacturing, and the quality and character of said cigars.

PAR. 8. The use by the respondents of the statements and representations, hereinabove set-out, together with the pictorial representations referred to, in connection with the offering for sale and sale of their cigars in commerce as herein set-out, has had the capacity and tendency to, and does, mislead and deceive many dealers and members of the purchasing public into the erroneous and mistaken beliefs that said representations are true and into the purchase of substantial quantities of respondents' said cigars in and on account of said beliefs induced as above set-out. As a result thereof, trade has been diverted unfairly to the respondents from those competitors named in paragraph 2 hereof who do not misrepresent the nature, character, or quality of the tobacco used in their cigars and who do not otherwise misrepresent their products. In consequence thereof, 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. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 15, 1938, issued and thereafter, served its complaint in this proceeding upon respondent Isadore H. Lukacher, trading as Casa Blanca Cigar Co. and as Belvedere Tobacco Co. and Bert Lukacher, 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 Marshall Morgan, attorney for the Commission, and in opposition to the allegations of the complaint by respondents Isadore H. and Bert Lukacher, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testi-

mony 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, 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. Respondent Isadore H. Lukacher is an individual doing business under the names Casa Blanca Cigar Co. and Belvedere Tobacco Co. with his principal office and place of business at York, Pa. He is now, and for more than 3 years last past has been, engaged in manufacturing various brands of cigars and in selling and distributing the same to jobbers, chain establishments, and retailers throughout the United States. Respondent Bert Lukacher is the son of Isadore H. Lukacher and for some 6 years last past has been associated in the aforesaid business. Repondent Isadore H. Lukacher is the owner of the business operated as above decribed and respondent Bert Lukacher participates in the active management and control of the business and in formulating its policies as hereinafter detailed. Respondents maintain, and for several years last past have maintained, a course of trade in said cigars so sold and distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In consummating the sale and distribution of their products, the respondents cause said cigars to be transported and delivered from their aforesaid place of business in York, Pa. through and into various other States to the respective purchasers thereof at their respective points of location in States of the United States other than the State of Pennsylvania. In the course and conduct of said business, the respondents have been, and are now, in competition with various other individuals and with corporations and partnerships also engaged in the manufacture and in the sale and distribution of cigars in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of their said business, and for the purpose of inducing the purchase of their products by the consuming public, the respondents have made use of various brand names, labels, and other designations purporting to be descriptive of the nature, quality, and character of said cigars. The hereinafter described brand names

and labels for individual cigars and cigar containers, among others, have been variously used by respondents in connection with the aforesaid sale of their cigars.

In connection with a brand of cigars designated by respondents as "Garcia Delight" a label is used on each cigar which reads "Garcia Delight—Havana." On the inside lid of the container for this brand of cigars there appear the following statements: "Havana blend," "10¢ straight," "Cuban workmanship," and "made in Tampa." These statements are all printed in sizeable type and are displayed in conspicuous manner when the lid of the container is opened.

In connection with a brand of cigars designated by respondents as "Garcia Supreme," the container therefor has branded thereon the following statements: "Havana blend," "hand made," and "exceptional quality." These statements are also printed in sizeable type and likewise appear conspicuously when the lid of the container is lifted.

In connection with the brand of cigars designated by respondents as "San Vega," there appear on the outside of the container therefor the words "Vuelta Havana" in sizeable type easily legible, together with a pictorial representation of a tobacco field and tropical palms. The words "Vuelta Havana" also appear similarly around all the outer edges of said container. On the inside of the box top appear the words "Havana blend" and "hand made" printed in letters of sizeable type which show conspicuously when the lid is lifted, together with a pictorial representation of a tobacco field and tropical palms. At the back of said container, near the top thereof, in conspicuous type also appear the words "Vuelta Havana."

In connection with a brand of cigars designated by respondents as "Havana Imperial" a label is used on each cigar which reads "Havana Imperial" and which also contains a pictorial representation of tropical palms. On the outside of the lid of the containers in which this brand is placed appear the words "Havana Imperial," in conspicuous white and gold colored lettering. The words "Havana Imperial," together with a pictorial representation of tropical palms, appear at various other places on the outside and inside of said container.

PAR. 4. The finest quality of tobacco for cigar-making purposes is grown in Cuba, not far from the city of Havana. The word "Havana" or "Habana," when used to refer to or to describe tobacco, has been used and understood since time immemorial by cigar manufacturers and dealers and by the cigar-consuming public as designating or referring to tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and extensively used and consumed in cigars manufactured in

whole or in part from such tobacco. Such Havana tobacco has the reputation among cigar dealers and the cigar-consuming public as being cigar tobacco of the highest quality and excellence, the last word in quality, aroma, and taste, and cigars made therefrom are in large demand throughout the United States. Many of the consuming public prefer to purchase cigars containing Havana tobacco believing that the use of such tobacco in cigars adds to and increases the quality and desirability thereof.

To the trade and the public, the word "Havana" used as a band or label on cigars indicates a clear Havana cigar, one made entirely of Havana leaf, and the policy of reputable cigar manufacturers is to use the word "Havana" on the label of cigars only when the brand is that of a clear Havana cigar. Vuelta Abajo is a district in the province of Pinar Del Rio, Cuba. Tobacco grown in the Vuelta Abajo district has long been considered by the cigar trade and consuming public to be of a higher and more desirable quality for use in cigars than any other tobacco grown in the Island of Cuba or elsewhere. Many of the consuming public prefer to purchase cigars made from tobacco grown in the Vuelta Abajo district to cigars made from tobacco grown elsewhere. The term "Vuelta Abajo" when used as a brand for cigars signifies to the trade and public alike very high-grade Havana tobacco.

The term "Havana blend" used as a part of a label on a cigar box, or otherwise, indicates to the trade and to the consuming public alike that the cigar carrying such label contains a percentage of Havana leaf or tobacco grown on the Island of Cuba.

For nearly 50 years, cigars have been made in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District. Such cigars are known and referred to as "Tampa cigars," and are manufactured principally from tobacco grown in and imported from the Island of Cuba. Such cigars so made in said city and district of Tampa have acquired a wide and favorable reputation.

The expressions "Cuban workmanship" and "made in Tampa," appearing on a cigar box container, indicate to the trade and the public a high-grade cigar manufactured in the Cuban style at Tampa.

PAR. 5. Respondents state that they manufacture the cigars, which are labeled and branded in the manner herein described, from scrap tobacco. Respondents further state that they purchase a portion of the scrap tobacco which is used in the manufacture of said cigars from factories which use Havana tobacco in the manufacture of cigars retailing for 5 and 10 cents. Respondents do not manufacture, sell, or distribute any "Havana" cigars, that is, cigars made entirely of

tobacco grown on the island of Cuba. Respondents do not import from Cuba or any other foreign country any of the tobacco used in the manufacture of the cigars which they brand and label in the manner herein described. Respondents do not have any invoices, bills of sale, or other documents showing the purchase or acquisition of any Havana tobacco by them. Respondents assume and conclude that the scrap tobacco, which they purchase from factories which use Havana tobacco, contains Havana tobacco. Such scrap tobacco is not bought by the respondents or sold by the sellers as Havana tobacco but as scrap tobacco. Respondents state that they use one part of this scrap tobacco to five parts of other scrap tobacco in the manufacture of all of their cigars. Respondents brand their cigars with various names to retail at various prices, some for 10 cents and others for 5 cents, depending upon the particular brand or label used.

Respondents do not purchase or use in the manufacture of their said cigars, any Havana tobacco, as such, or any tobacco which can be designated or identified as Havana tobacco within any reasonable degree of certainty.

Respondents manufacture cigars by hand—have no machinery. Respondents do not manufacture any of their cigars by or with "Cuban workmanship."

PAR. 6. Based upon the testimony of experts of long experience in connection with the manufacture, branding, labeling, and sale of cigars and who by reason of long and intimate contacts have been able to learn the viewpoint of the trade and consuming public with respect to the meaning and significance of cigar brands and labels, the Commission finds that the labeling on Commission's Exhibit No. 1, a cigar box carrying the brand name "Garcia Delight" and the expressions "Cuban workmanship," "made in Tampa," "Havana blend," and "10¢ straight," is a representation by the respondents that the cigars in the box are Cuban workmanship, expensive because all Cuban workmanship is by hand, that the filler in the cigar is worked out in a Cuban method known to the trade, and that the cigar has Havana tobacco in the blend. Respondents' "Garcia Delight" cigars are made by respondents at York, Pa., and not at Tampa. The Commission finds from the record that the representation "made in Tampa," as used by respondents, is admitted to be untrue.

The Commission further finds that Commission's Exhibit No. 3, a cigar box carrying the brand name "San Vega," the picture of a Spanish plantation, the words "Vuelta Havana" and the word "primeras" meaning "prime" or "our prime lot in the trade," the word "exquisitos" meaning "exquisite" and the words "selectos tobaccos"

meaning "selected tobaccos" is a representation by the respondents that the cigars were clear Havana.

The Commission further finds that the labeling on Commission's Exhibit No. 5, a cigar box carrying the brand name "Garcia Supreme," together with the expressions "Havana blend," "hand made," "exceptional quality," and "after dinner" is a representation by the respondents to the trade and to the public that the cigars were still manufactured by the famous Garcia family and that there was a certain percentage of Havana tobacco in the cigars.

The Commission finds further that the labeling on Commission's Exhibit No. 7, a cigar box carrying the brand name "Havana Imperial," without the wording "Havana blend" is a representation by the respondents to the trade, and to the consuming public that the cigars therein are clear Havana; that the word "Havana" appearing on a cigar band or label with the words "Garcia Delight" is a representation by the respondents to the trade and public that such cigar is clear Havana; and that inasmuch as the bands or labels used on respondents' "Havana Imperial" and "Garcia Delight—Havana" cigars, contain no qualification to the effect that such cigars are blended, the purchaser of such cigars, so banded or labeled, has no way of knowing from such bands that the cigars are blended. The cigar boxes, labels, and brands which are referred to in this paragraph are used by the respondents in the sale and distribution of their said cigars.

PAR. 7. One Benjamin Carlson, a cigar manufacturer located in Wrightsville, Pa., owns and has used the label referred to herein as the "Garcia Supreme" label (Commission's Exhibit No. 10) in manufacturing his cigars, and has furnished respondents with such labels, which respondents place on cigars and also on the under side of box containers, as shown in Commission's Exhibit No. 5, with the addition of certain words. It is estimated respondents have used 10,000 of such labels and still use them on their products, selling to Carlson, who is also a cigar broker, and to their trade generally.

PAR. 8. Among the competitors of respondents, referred to previously, there are those who truthfully represent the place of origin of the tobacco used in their respective cigars, the place of manufacture thereof, the method of manufacturing, and the quality and character of said cigars.

PAR. 9. The use by the respondents of the statements and representations, hereinabove set-out, together with the pictorial representations referred to, in connection with the offering for sale and sale of their cigars in commerce as herein set-out, has had the capacity and tendency to, and does, mislead and deceive many dealers and

members of the purchasing public into the erroneous and mistaken beliefs that said representations are true and into the purchase of substantial quantities of respondents' said cigars in and on account of said beliefs induced as above set-out. As a result thereof, trade in said commerce has been diverted unfairly to the respondents from competitors who do not misrepresent the nature, character, or quality of the tobacco used in their cigars and who do not otherwise misrepresent their products. In consequence thereof, 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.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 respondents thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before Robert S. Hall, examiner of the Commissioner theretofore duly designated by it, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), 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 respondent Bert Lukacher, individually, and respondent Isadore H. Lukacher, individually and trading as Casa Blanca Cigar Co. or Belvedere Tobacco Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Havana," or the term "Vuelta Havana," or any other terms or picturizations indicative of Cuban origin, or descriptive of Cuba, alone or in conjunction with any other terms, to describe, designate, or in any way refer to cigars which are not made entirely from tobacco grown on the Island of Cuba.

2. Representing, through the use of the term "made in Tampa," or any other term or terms of similar import or meaning, or in any other manner, that cigars which have not been made in Tampa, Fla., are Tampa cigars or have been made in Tampa, Fla.

3. Using the term "Cuban workmanship" or any other term or terms of similar import or meaning to describe, designate, or in any way refer to cigars which have not been made by Cubans or by the Cuban style of workmanship.

4. Using the term "Havana blend" or any other term or terms of similar import or meaning to describe, designate, or in any way refer to cigars which do not contain a substantial amount of tobacco grown on the Island of Cuba.

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

FEDERAL ORGANIZATION, INC., AND SAMUEL L. PRESNER

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

Docket 3782. Complaint, May 5, 1939—Decision, Aug. 2, 1939

Where a corporation and an individual, who was president thereof prior to its dissolution, and formulated, controlled, and directed its policies and practices, engaged in sale and distribution of devices and medicinal preparations containing drugs, for treatment of genital and urinary disorders and diseases, and acting together and in cooperation with each other in doing the acts and things below set out; in advertisements which they disseminated and caused to be disseminated concerning their said products, through the mails, through newspapers and periodicals of general circulation and through circulars and other printed or written matter, and which were intended and calculated to induce purchase of their said products—

(*a*) Represented, through such typical statements as "We believe our products will be of great help, for more than 20,000 customers have found them effective * * * safe to use. * * * no dangerous drugs and no harmful chemicals of any kind. * * * not habit forming * * * used by countless doctors," and "If weak, nervous, de-energized, suffer from Gland, Kidney, Stomach or other weakness, send for details * * *," etc., and "MEN—STRENGTHEN VITAL POWERS. Increase energy. * * * Confidential information * * *," that their preparations and devices were safe for use, contained no dangerous drugs, were recommended by doctors, constituted a cure or remedy and competent treatment for weak, nervous, and deenergized conditions and for gland, kidney, stomach, and other weaknesses, and would increase sex power, vitality, and manpower without dangerous use of harmful drugs and artificial stimulants;

Facts being their said preparations and devices generally were not safe for use or recommended by doctors, and were not a cure or remedy or competent treatment for aforesaid conditions or gland, kidney, stomach, or other disorders, and would not increase sex power or vitality;

(*b*) Represented that their "Vibro Appliance" and other devices named, were aids in the development of the male sexual anatomy and would restore sexual power, and that their "Vitamin E Perles" would prevent impotency and degeneration of said cells, and was a potent tonic and stimulant for men or women, and that their "Spanish Passion Extract" and "Double Strength Spanish Passion Extract" were healthful, and noninjurious, quick-acting stimulants for the organs of sex, and served as a tonic, and were beneficial in treatment of prostate troubles, cystitis, kidney diseases, inflammation of the urinary canal and bladder, and other related ailments and conditions, and that their preparation "African Jungle Tree" was a harmless, powerful sexual stimulant which would restore such vigor in man;

(c) Represented that their "Stamina Kel-Pep" would increase the appetite, assist digestion and overcome constipation, and build up energy, and the blood or tissues, and that their "Nerv-Tonik" was a tonic which would build up the body, give new blood, increase the weight, improve appetite, increase vigor, etc.;

(d) Represented that their "Kidney Herb Tea" was a competent treatment for genitourinary diseases which would dissolve pus, gravel, kidney stones, and relieve bladder irritation, and that their "Z. K. Herb Pearls" would reduce high blood pressure; and

(e) Represented that their "K-9 Herb Tabs" had antiseptic properties, and that their "Flora Laxaid" constituted a cure or remedy for constipation;

Facts being their said various devices and preparations would not, as case might be, accomplish results claimed for them as above set forth, and were not a cure or remedy for, or competent treatment of, or beneficial treatment for various diseases, conditions, and disorders for which recommended, their said "Stamina Kel-Pep" contained iodine, use of which would be definitely harmful in event of users who had pulmonary tuberculosis or were suffering from goiter, and their "Spanish Passion Extract" and "African Jungle Tree" preparations contained yohimbine, use of which in sufficient quantities to be effective would be injurious to health, with irritation to urinary tract and serious nephritis as possible after effects; and

Where said corporation and said individual engaged as aforesaid, and in advertising their said products—

(f) Disseminated false advertisements through failing to reveal to purchasers or prospective purchasers that use of their said devices and of their said preparations containing iodine and yohimbine by uninformed persons, under conditions recommended or such conditions as are customary and usual, might in some cases cause serious injury to health;

(g) Represented that their various products had been approved by a research organization engaged in experimental study and application of scientific principles in testing and in analysis, or in preparation of, medicines, drugs, or chemicals, through use in various of their circulars, advertisements, and other printed matter, of facsimile of a purported seal bearing legend "A CERTIFIED FEDERAL PRODUCT Approved by the Federal Research Laboratories of New York," together, usually, with a "WARNING" to the reader against products imitating their own, and an invitation, for reader's protection, to "always look for the Federal Seal on every package represented to be a Federal Product," and represented thereby, through use of words "Federal" and "Federal Research Laboratories," that product sold by them had been tested and approved by some agency or experimental laboratory of the United States Government; and

(h) Represented, through use of statement "Federal Organization, Inc., Successor to Federal Research Laboratories," in certain of their circulars, advertisements, and other printed matter, that they owned, controlled, or operated a laboratory equipped for experimental study, testing, analyzing, and preparation of medicine or drugs;

Facts being their said products had not been tested or approved by any experimental or testing laboratory, supposed "Federal Research Laboratory of New York" was merely trade name used by them, they did not own, control, or operate a laboratory equipped for experimental study, tests, analysis, or preparation of medicines, drugs, or chemicals, and their products had never

been tested or approved by any United States Government agency or laboratory;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and with result of inducing, through use of such false, deceptive, and misleading statements, etc., directly or indirectly, purchase by public of their said devices, and medicinal preparations containing injurious drugs, and with likelihood so to induce such purchase:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Federal Organization, Inc., a corporation, and Samuel L. Presner, an individual, and president of Federal Organization, Inc., hereinafter referred to as respondents, have violated the provisions of the 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 Federal Organization, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 198 Broadway, in the city of New York, State of New York, and respondent Samuel L. Presner, whose present address is 4434 Post Avenue, in the city of Miami, Fla., is an individual and is the president of Federal Organization, Inc., and formulates, controls, and directs its policies and practices. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

Par. 2. Respondents during the year last past have been and still are engaged in the sale and distribution of devices and medicinal preparations containing drugs for the treatment of genital and urinary disorders and diseases. Among the products offered for sale and sold by respondents are certain devices designated "Vibro Appliance," "Brace-O Appliance," and "Giant Developer," represented to be aids in the development of the male sexual organ and aids in the performance of sexual act; a device designated "Prosto Massager," offered and sold as a treatment for the prostate gland; preparations designated "Vitamin E Perles," "Stamina Kel-Pep," "Spanish Passion Extract," "Double Strength Spanish Passion Extract," "African Jungle Tree," and "Nerv-Tonik" offered and sold as aphrodisiacs; preparations

designated "Kidney Herb Tea" and "K-9 Herb Tabs" offered and sold as treatment for kidney and urinary disorders and weakness; "Z. K. Herb Pearls" offered and sold as a treatment for reducing high blood pressure; and "Flora Laxaids" offered and sold as a laxative.

In the course and conduct of their business, respondents cause said devices and preparations, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in said devices and preparations among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. In the false statements and representations disseminated and caused to be disseminated as aforesaid the respondents represent that their preparations and devices are safe for use, that their preparations contain no dangerous drugs and are recommended by doctors; that said preparations and devices are a cure or remedy and a competent treatment for weak, nervous, and deenergized conditions and for gland, kidney, stomach, and other weaknesses; that said devices and preparations will increase sex power, vitality, and manpower without dangerous use of harmful drugs and artificial stimulants. Among and typical of such false statements and representations contained in said advertisements are the following:

We believe our products will be of great help, for more than 20,000 customers have found them effective. * * * These products are safe to use. They contain no dangerous drugs and no harmful chemicals of any kind. They are not habit forming. They are used by countless Doctors.

If weak, nervous, de-energized, suffer from Gland, Kidney, Stomach or other weakness, send for details regarding our natural methods and herb remedies.

MEN—STRENGTHEN VITAL POWERS. Increase energy. New Method brings quickest results WITHOUT drugs, pills or medicine. Confidential information to men for 3¢ stamp.

In the various advertising circulars and other printed matter disseminated and caused to be disseminated as aforesaid, the respondents represent that their devices "Vibro Appliance," "Brace-O Appliance," "Giant Developer," and "Prosto Massager" are aids in the development of male sexual organs and will restore sexual power; that their preparation "Vitamin E Perles" will prevent sex impotency, degeneration of the sex cells, sex sterility, and is a potent tonic and nerve stimulant for male and female; that their preparation "Stamina Kel-Pep" increases the appetite, assists digestion, overcomes constipation and builds up energy, endurance, red blood, and pounds of healthy flesh and tissue; that their preparations "Spanish Passion Extract" and "Double Strength Spanish Passion Extract" are healthful, not injurious, quick acting, stimulants for the sexual organs, and which serve as a tonic and which are beneficial in the treatment of prostate troubles, cystitis, kidney diseases, inflammation of the urinary canal and bladder, kidney stones, and gravel in the kidneys; that their preparation "Kidney Herb Tea" is a competent treatment for genito-urinary diseases and will dissolve pus, gravel and stones in the kidneys and relieve irritation of the bladder; that their preparation "African Jungle Tree" is a harmless, powerful sexual stimulant which will restore sexual vigor of man; that their preparation "Nerv-Tonik" is a food tonic which will build up the body with new blood, increase the weight, help the digestive system, improve appetite, stimulate the glands, and increase vital energy; that their preparation "Z. K. Herb Pearls" will reduce high blood pressure; that their preparation "Flora Laxaid" is a cure or remedy for constipation; and that their preparation "K-9 Herb Tabs" have antiseptic properties.

PAR. 4. In truth and in fact each and all the representations and claims hereinabove set forth, as well as many other claims not specifically mentioned herein which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' devices and preparations, are false, misleading, and untrue. Respondents' preparations and devices generally are not safe for use, are not recommended by doctors and are not a cure or remedy or a competent treatment for weak, nervous, or deenergized conditions or for gland, kidney, or stomach or other disorders and will not increase sex power or vitality.

The devices "Vibro Appliance," "Brace-O Appliance," "Giant Developer," and "Prosto Massager" will not aid in the development of male organs and will not restore sexual power. The various preparations hereinbefore mentioned are not a cure or remedy for, or a competent treatment of, or beneficial in the treatment of various diseases, conditions, and disorders for which said preparations are recommended by the respondents as above set out and will not accomplish the results as represented by the respondents.

Respondents' preparation "Stamina Kel-Pep" contains iodine, the use of which would be definitely harmful in the event the users thereof had pulmonary tuberculosis or were suffering from goiter.

Respondents' preparations "Spanish Passion Extract," "Double Strength Spanish Passion Extract," and "African Jungle Tree" contain yohimbine, a drug the use of which in sufficient quantities to be effective would be injurious to health and cause irritation and injury to the urinary tract and serious nephritis may be one of the after effects.

PAR. 5. In addition to the false and misleading statements hereinabove set forth, the respondents are also engaged in the dissemination of false advertisements as aforesaid in that the respondents fail to reveal to purchasers and prospective purchasers that the use of respondents' devices and the use of respondents' preparations containing iodine and yohimbine, by uninformed persons under the conditions recommended or under such conditions as are customary and usual may in some cases cause serious injury to health.

PAR. 6. For the purpose of misleading and deceiving purchasers and prospective purchasers the respondents represent that their various products have been approved by a research organization engaged in the experimental study and application of scientific principles in testing and analyzing or in the preparation of medicine, drugs, or chemicals. This representation is made by means of the facsimile of a purported seal in various of its circulars, advertisements, and other printed matter upon which appears the legend:

A CERTIFIED
FEDERAL
PRODUCT

Approved by the Federal Research
Laboratories of New York

The facsimile of such seal is usually accompanied by the following or some similar statement:

WARNING

Imitation products are appearing on the market which are being represented as ours. In some instances our advertising literature and name of our prod-

ucts have flagrantly been copied in defiance of the law. We call this matter to your attention so that you will not be "taken in" by the unscrupulous methods which some firms dare use.

For your protection, always look for the Federal Seal on every package represented to be a Federal Product. It is your safeguard to quality and merit and satisfaction All Ways.

The use by the respondents of the word "Federal" and "Federal Research Laboratories" is a representation that the products sold by the respondents have been tested and approved by some agency or experimental laboratory of the United States Government.

In addition, in certain of its circulars, advertisements, and other printed matter, the respondents use the statement:

Federal Organization, Inc.
Successors to Federal Research Laboratories.

By this means the respondents represent that they own, control, or operate a laboratory equipped for experimental study, testing, analyzing, and preparation of medicine or drugs.

In truth and in fact the products sold and distributed by the respondents, have not been tested or approved by any experimental or testing laboratory, but instead "Federal Research Laboratories" of New York is merely a trade name used by the respondents. Furthermore, the respondents do not own, control, or operate a laboratory equipped for experimental study, testing, analyzing, or preparation of medicine, drugs, or chemicals.

Respondents' products have never been tested or approved by any United States Government agency or laboratory.

PAR. 7. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparations and devices, 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 and mistaken belief that such false statements, representations and advertisements are true, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondents' devices and medicinal preparations containing injurious drugs.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 5, 1939, issued and served

its complaint in this proceeding upon respondents, Federal Organization, Inc., a corporation, and Samuel L. Presner, an individual, and president of Federal Organization, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 16, 1939, the respondent, Samuel L. Presner, filed his answer, in which answer be admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 Federal Organization, Inc., was a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 198 Broadway, in the city of New York, State of New York. On November 17, 1938, the said corporation was dissolved. Respondent Samuel L. Presner, whose present address is 4434 Post Avenue, in the city of Miami, State of Florida, is an individual and was the president of Federal Organization, Inc., and formulated, controlled and directed its policies and practices. Said respondents acted together and in cooperation with each other in doing the acts and things hereinafter found.

PAR. 2. Respondents during the year last past were engaged in the sale and distribution of devices and medicinal preparations containing drugs for the treatment of genital and urinary disorders and diseases. Among the products offered for sale and sold by respondents are certain devices designated "Vibro Appliance," "Brace-O Appliance," and "Giant Developer," represented to be aids in the development of the male sexual organ and aids in the performance of the sexual act; a device designated "Prosto Massager," offered and sold as a treatment for the prostate gland; preparations designated "Vitamin E Perles," "Stamina Kel-Pep," "Spanish Passion Extract," "Double Strength Spanish Passion Extract," "African Jungle Tree," and "Nerv-Tonik" offered and sold as aphrodisiacs; preparations designated "Kidney Herb Tea" and "K-9 Herb Tabs" offered and sold as treatment for kidney and urinary disorders and weakness; "Z. K. Herb Pearls" offered and sold as a treatment for reducing

high blood pressure; and "Flora Laxaid" offered and sold as a laxative.

In the course and conduct of their business, respondents caused said device and preparations when sold to be transported from their place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents, at all times mentioned herein, maintained a course of trade in commerce in said devices and preparations among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents disseminated and caused the dissemination of false advertisements concerning their said products by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which were distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said products, and disseminated and caused the dissemination of, false advertisements concerning their said products by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as commerce is defined in the Federal Trade Commission Act. In the false statements and advertisements disseminated and caused to be disseminated, as aforesaid, the respondents represented that their preparations and devices are safe for use; that their preparations contain no dangerous drugs and are recommended by doctors; that said preparations and devices are a cure or remedy and a competent treatment for weak, nervous, and deenergized conditions and for gland, kidney, stomach, and other weaknesses; that said devices and preparations will increase sex power, vitality, and manpower without dangerous use of harmful drugs and artificial stimulants. Among and typical of such false statements and representations contained in said advertisements are the following:

We believe our products will be of great help, for more than 20,000 customers have found them effective * * * These products are safe to use. They contain no dangerous drugs and no harmful chemicals of any kind. They are not habit forming. They are used by countless Doctors.

If weak, nervous, de-energized, suffer from Gland, Kidney, Stomach or other weakness, send for details regarding our natural methods and herb remedies.

MEN—STRENGTHEN VITAL POWERS. Increase energy. New method brings quickest results WITHOUT drugs, pills or medicines. Confidential information to men for 3¢ stamp.

In the various advertising circulars and other printed matter, disseminated and caused to be disseminated as aforesaid, the respondents represented that their devices "Vibro Appliance," "Brace-O Appliance," "Giant Developer," and "Prosto Massager" are aids in the development of the male sexual organ and will restore sexual power; that their preparation "Vitamin E Perles" will prevent sex impotency, degeneration of the sex cells, sex sterility, and is a potent tonic and nerve stimulant for male and female; that their preparation "Stamina Kel-Pep" increases the appetite, assists digestion, overcomes constipation, and builds up energy endurance, red blood, and pounds of healthy flesh and tissue; that their preparations "Spanish Passion Extract" and "Double Strength Spanish Passion Extract" are healthful, not injurious, quick acting, stimulants for the sexual organs, and which serve as a tonic and which are beneficial in the treatment of prostate troubles, cystitis, kidney diseases, inflammation of the urinary canal and bladder, kidney stones, and gravel in the kidneys; that their preparation "Kidney Herb Tea" is a competent treatment for genitourinary diseases and will dissolve pus, gravel and stones in the kidneys and relieve irritation of the bladder; that their preparation "African Jungle Tree" is a harmless, powerful sexual stimulant which will restore sexual vigor of man; that their preparation "Nerv-Tonik" is a food tonic which will build up the body with new blood, increase the weight, help the digestive system, improve appetite, stimulate the glands and increase vital energy; that their preparation "Z. K. Herb Pearls" will reduce high blood pressure; that their preparation "Flora Laxaid" is a cure or remedy for constipation; and that their preparation "K-9 Herb Tabs" has antiseptic properties.

PAR. 4. In truth and in fact each and all of the respresentations and claims hereinabove set forth, as well as many other claims not specifically mentioned herein which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' devices and preparations, are false, misleading, and untrue. Respondents' preparations and devices generally are not safe for use, are not recommended by doctors and are not a cure or remedy or a competent treatment for weak, nervous, or deenergized conditions or for gland, kidney, stomach, or other disorders, and will not increase sex power or vitality.

The devices "Vibro Appliance," "Brace-O Appliance," "Giant Developer," and "Prosto Massager" will not aid in the development of male sexual organs and will not restore sexual power. The various preparations hereinbefore mentioned are not a cure or remedy for, or a competent treatment of, or beneficial in the treatment of various diseases, conditions and disorders for which said preparations are

recommended by the respondents as above set out and will not accomplish the results as represented by the respondents.

Respondents' preparation "Stamina Kel-Pep" contains iodine, the use of which would be definitely harmful in the event the users thereof had pulmonary tuberculosis or were suffering from goiter.

Respondents' preparations "Spanish Passion Extract," "Double Strength Spanish Passion Extract," and "African Jungle Tree" contain yohimbine, a drug the use of which in sufficient quantities to be effective would be injurious to health and cause irritation and injury to the urinary tract and serious nephritis may be one of the after effects.

PAR. 5. In addition to the false and misleading statements hereinabove set forth, respondents were also engaged in the dissemination of false advertisements, as aforesaid, in that the respondents failed to reveal to purchasers, and prospective purchasers that the use of respondents' devices and the use of respondents' preparations containing iodine and yohimbine, by uninformed persons under the conditions recommended or under such conditions as are customary and usual, may in some cases cause serious injury to health.

PAR. 6. For the purpose of misleading and deceiving purchasers and prospective purchasers, the respondents represented that their various products have been approved by a research organization, engaged in the experimental study and application of scientific principles in testing and analyzing, or in the preparation of, medicines, drugs, or chemicals. This representation was made by means of the facsimile of a purported seal in various of their circulars, advertisements, and other printed matter upon which appears the legend:

A CERTIFIED
FEDERAL
PRODUCT
Approved by the Federal Research
Laboratories of New York

The facsimile of such seal is usually accompanied by the following or some similar statement:

WARNING

Imitation products are appearing on the market which are being represented as ours. In some instances our advertising literature and name of our products have flagrantly been copied in defiance of the law. We call this matter to your attention so that you will not be "taken in" by the unscrupulous methods which some firms dare use. For your protection always look for the Federal Seal on every package represented to be a Federal Product. It is your safeguard to quality and merit and satisfaction All Ways.

The use by the respondents of the word "Federal" and "Federal Research Laboratories" is a representation that the products sold by the respondents have been tested and approved by some agency or experimental laboratory of the United States Government.

In addition, in certain of its circulars, advertisements, and other printed matter, respondents used the statement "Federal Organization, Inc., Successors to Federal Research Laboratories." By this means, the respondents represented that they own, control, or operate a laboratory equipped for experimental study, testing, analyzing, and preparation of medicine or drugs.

The products sold and distributed by the respondents have not been tested or approved by any experimental or testing laboratory, but instead "Federal Research Laboratory" of New York was merely a trade name used by the respondents. Furthermore, the respondents have not owned, controlled, or operated a laboratory equipped for experimental study, testing, analysis, or preparation of medicine, drugs, or chemicals.

Respondents' products have never been tested or approved by any United States Government agency or laboratory.

PAR. 7. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medicinal preparations and devices, had the capacity and tendency to, and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements were true, and induced or has been likely to induce, directly or indirectly, the purchase by the public of respondents' devices and medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 Samuel L. Presner, 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 case might proceed to final hearing upon the record; it appearing that the respondent Federal Organization, Inc., is no longer in existence, and the Commission having made its findings as to the facts and conclusion that said respondent Samuel L. Presner has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel L. Presner, an individual, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of devices now designated by the names of "Vibro Appliance," "Brace-O Appliance," "Giant Developer," "Prosto Massager," or any other similar devices, whether sold under the same names or any other name or names, or medicinal preparations containing drugs now designated "Stamina Kel-Pep," "Spanish Passion Extract," "Double Strength Spanish Passion Extract," "African Jungle Tree," "Nerv-Tonik," "Kidney Herb Tea," "K-9 Herb Tabs," "Z. K. Herb Pearls," "Flora Laxaid," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or names; or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said devices or medicinal preparations, which advertisements (1) represent, directly or through implication, (*a*) that his said devices "Vibro Appliance," "Brace-O Appliance," "Giant Developer" or "Prosto Massager" will aid in the development of the male sexual organ, restore sexual power or cure or relieve disorders of the prostate gland; (*b*) that his said preparation "Stamina Kel-Pep" will increase the appetite, assist digestion, overcome constipation or build up energy, endurance, the blood or tissues; (*c*) that said preparations "Spanish Passion Extract" or "Double Strength Spanish Passion Extract" are healthful stimulants or tonics for the sexual organs, or constitute effective remedies or beneficial treatments for prostate disorders, cystitis, kidney disorders, inflammation of the urinary organs, kidney stones or gravel; (*d*) that said preparation "African Jungle Tree" is a harmless sexual stimulant or will restore sexual vigor; (*e*) that said preparation "Nerv-Tonik" is a tonic, or will build up the body, give new blood, increase the weight, aid the

digestive system, improve the appetite, stimulate the glands or increase vigor; (*f*) that said preparation "Kidney Herb Tea" is a competent treatment for genitourinary diseases, or will dissolve pus, gravel or stones in the kidneys or relieve bladder irritation; (*g*) that said preparation "Z. K. Herb Pearls" will reduce high blood pressure; (*h*) that said preparation "K-9 Herb Tabs" has antiseptic properties; (*i*) that said preparation "Flora Laxaid" is a cure or remedy for constipation; (2) or which advertisements concerning the preparations designated "Stamina Kel-Pep," "Spanish Passion Extract," "Double Strength Spanish Passion Extract," "African Jungle Tree," fail to reveal that these preparations are not wholly safe to be used by the lay public in self medication.

It is further ordered, That respondent do cease and desist from representing, through the use of the word "Federal" on seals or otherwise, that his products have been tested, inspected or approved by an agency or bureau of the United States Government; or representing through the use of the phrases "Laboratories" or "Research Laboratories" as part of his trade name, or in any other manner, that he maintains a laboratory for making scientific tests on products sold by him.

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.

It is further ordered, That this proceeding be, and the same hereby is, closed as to the respondent, Federal Organization, Inc., without prejudice to the right of the Commission to reopen the same and resume prosecution thereof in accordance with the Commission's regular procedure should future facts so warrant.

IN THE MATTER OF

JULIUS M. FIRK, TRADING AS STRAUSS TAILORING COMPANY, FEDERAL TAILORING COMPANY, BELL TAILORING COMPANY AND ARLIN 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 3788. Complaint, May 11, 1939—Decision, Aug. 2, 1939

Where an individual engaged, under various trade names, in manufacture, sale, and distribution of suits and other clothing for men, and in selling his said products to purchasing public in various States directly and through merchant tailors who displayed samples of his cloth, took measurements of individual customers, and sent same to his place of business for making up into suits and other articles of clothing for men; in furtherance of practice of falsely representing constituent fiber or material of which his said clothing was made, and to induce purchase of his clothing, and in endeavor to aid such merchant tailors to procure customers' orders therefor—

(*a*) Caused false statements and representations purporting to be descriptive of his said clothing and its constituent fibers or materials to be inserted on swatch cards, markers, price lists, and circulars distributed among purchasers and prospective purchasers, and thus represented, among other things, through placing on swatch cards and in various advertising circulars statements "Guaranteed All Wool," "Woolens of Quality," and "Super Quality Worsteds," that the fabrics so described were composed entirely of "Wool," definite and specific meaning of which word, unqualified, to purchasing or consuming public, is virgin or unused, as distinguished from reclaimed, wool;

Facts being they were not all wool, for purchase of which, by reason of established reputation for superior resistance to cold and wearing qualities, there is decided preference in suits and other clothing for men over fabrics composed in part of cotton, rayon or other fiber, but were composed only in part of wool, and in part of rayon or other materials; and

(*b*) Represented that lining used in manufacture of his said clothing was composed predominantly of silk, product of cocoon of silkworm, and thus represented, through practice, among others, of placing on swatch cards or in various advertising circulars and other printed matter statements such as "Silk Celanese Sleeve and Body Lining," "Silk Celatate Sleeve and Body Lining," and "Silk Rayon Sleeve and Body Lining," that fabrics or linings thus described were composed predominantly of silk as aforesaid;

Facts being they were not composed of silk, as long understood by purchasing and consuming public from unqualified use of word as meaning unweighted silk, and were not suit linings composed of silk, held in great public esteem and confidence for its wearing qualities and decidedly preferred by purchasers and prospective purchasers over those linings composed of cotton, rayon, or other fibers, but were composed entirely of rayon, of presence of which, with appearance and feel of silk so as to be practically indistinguishable therefrom by purchasing public, said public was not advised through trade or coined names designating method of manufacture, used alone or in

conjunction with word "silk," and which were not sufficiently known to or understood by it to be readily identified as designating rayon;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and that he truthfully represented constituent fiber or material of his clothing, and to cause them to purchase same as result of erroneous belief thus engendered:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. D. Kash for the Commission.

Mr. Julius J. Schwartz, of Chicago, Ill., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Julius M. Firk, an individual, trading as Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Julius M. Firk is an individual, trading and doing business under the name of Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., with his principal place of business located at 224 South Wells Street, Chicago, Ill.

Par. 2. In the course and conduct of his aforesaid businesses, respondent, Julius M. Firk, is, and for several years last past has been, engaged in the manufacture, sale, and distribution of suits and other clothing for men. Sales of such products are made directly and through tailor merchants to the purchasing public located in various States of the United States and in the District of Columbia. Said merchant tailors display samples of respondent's cloth, take measurements of the individual customer, and send same to respondent's place of business in Chicago, Ill., where said orders are made up into suits and other articles of clothing for men. Respondent causes said products, when sold, to be transported from his said place of business in Chicago, Ill., to purchasers thereof located in other States of the United States and in the District of Columbia.

Par. 3. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the clothing sold and distributed by him is made by means of false representations on swatch cards, markers, price lists, and in various advertising matter and by failure to disclose the rayon content of certain of his clothing. In furtherance of this practice and for the purpose of inducing the purchase of his clothing and endeavoring to aid merchant tailors to procure customers' orders therefor, respondent has caused false statements and representations purporting to be descriptive of such clothing and its constituent fibers or materials to be inserted on swatch cards, markers, price lists, and circulars distributed among purchasers and prospective purchasers of said clothing.

PAR. 5. Among and typical of the acts and practices above described the respondent represents certain of his fabrics as being composed entirely of wool when in fact said fabrics are composed in part of wool and in part of other materials. As an example of this practice the respondent places on swatch cards and in various advertising circulars the following descriptive statements:

Guaranteed all wool.
Woolens of quality.
Super quality worsteds.

By this means the respondent represents that the fabrics so described are composed entirely of wool when in truth and in fact the fabrics so described are composed only in part of wool and in part of cotton, rayon, or other materials.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products and fabrics is the representation that the lining material used by the respondent in the manufacture of his clothing is composed predominantly of silk, the product of the cocoon of the silkworm. As an example of this practice respondent places on swatch cards and in various advertising circulars and other printed matter the following statements as descriptive of his lining material:

Silk celanese sleeve and body lining.
Silk celatate sleeve and body lining.
Silk rayon sleeve and body lining.

By this means the respondent represents that the fabrics or linings so described are composed predominantly of silk, the product of the cocoon of the silkworm, when in truth and in fact said fabrics or lining material are composed entirely of rayon.

PAR. 7. Over a period of many years fabrics made of all-wool or woolen materials have established a reputation of possessing superior cold-resistant and wearing qualities over fabrics made from cotton or

other fibers. Purchasers and prospective purchasers of suits and other clothing for men on account of such reputation have a decided preference for such all-wool or woolen fabrics over fabrics composed in part of cotton, rayon, or other fibers. The unqualified word "wool" has in the minds of the purchasing and consuming public the definite and specific meaning of virgin or unused wool as distinguished from reclaimed wool.

The word "silk" for many years last past has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. The unqualified word "silk" has in the minds of the purchasing and consuming public the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath. Suit lining composed of silk has held and still holds great public esteem and confidence for its wearing qualities and purchasers and prospective purchasers on account of such reputation have a decided preference for silk linings over linings composed of cotton, rayon, or other fibers.

The word "rayon" is the name of a chemical fiber or fabric which resembles silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon when not designated as such is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm. When trade or coined names or names designating the method of manufacture are used alone or in conjunction with the word "silk" as descriptive of a rayon fabric or material, such words are not sufficiently known to or understood by the public to be readily identified as designating rayon.

PAR. 8. 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 that the respondent has truthfully represented the constituent fiber or material of his clothing and to cause them to purchase respondent's clothing as a result of the erroneous belief engendered as above set forth.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 11th day of May 1939, issued,

and on the 15th day of May 1939, served its complaint in this proceeding upon Julius M. Firk, an individual trading as Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., charging him with the use of unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 said complaint and 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. Julius M. Firk is an individual trading and doing business under the names of Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., with his principal place of business located at 224 South Wells Street, Chicago, Ill.

PAR. 2. In the course and conduct of his aforesaid business respondent, Julius M. Firk, is, and for several years last past has been engaged in the manufacture, sale, and distribution of suits and other clothing for men. Sales of such products are made directly and through tailor merchants to the purchasing public located in various States of the United States and in the District of Columbia. Said merchant tailors display samples of respondent's cloth, take measurements of individual customers, and send same to respondent's place of business in Chicago, Ill., where said orders are made up into suits and other articles of clothing for men. Respondent causes said products when sold to be transported from his said place of business in Chicago, Ill., to purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business the respondent has engaged in the the practice of falsely representing the constituent fiber or material of which the clothing sold and distributed by him is made by means of false representations on swatch cards, markers, price lists, and in various advertising matter and by failure to disclose the rayon content of certain of his clothing. In furtherance of this practice and for the purpose of inducing the purchase of his clothing and endeavoring to aid merchant tailors to procure customers' orders therefor, respondent has caused false statements and representations purporting to be descriptive of such clothing and its constituent fibers or materials to be inserted on swatch cards, markers, price lists, and circulars distributed among purchasers and prospective purchasers of said clothing.

PAR. 5. Among and typical of such acts and practices as above described the respondent represents certain of his fabrics as being composed entirely of wool, when in truth and in fact said fabrics are composed in part of wool and in part of other materials. As an example of this practice, the respondent places on swatch cards and in various advertising circulars the following descriptive statements:

Guaranteed All Wool
Woolens of Quality
Super Quality Worsteds

By this means the respondent represents that the fabrics so described are composed entirely of wool, when in truth and in fact the fabrics so described are composed only in part of wool and in part of rayon or other materials.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products or fabrics is the representation that the lining material used by the respondent in the manufacture of his clothing is composed predominantly of silk, the product of the cocoon of the silkworm. As an example of this practice the respondent places on swatch cards or in various advertising circulars and other printed matter the following statements as descriptive of his lining material: "Silk Celanese Sleeve and Body Lining," "Silk Celatate Sleeve and Body Lining," and "Silk Rayon Sleeve and Body Lining." By this means the respondent represents that the fabrics or linings so described are composed predominantly of silk, the product of the cocoon of the silkworm, when in truth and in fact said fabrics or lining materials are composed entirely of rayon.

PAR. 7. Over a period of many years fabrics made of all wool or woolen materials have established a reputation for possessing superior

cold resistant and wearing qualities over fabrics made from cotton or other fibers. Purchasers and prospective purchasers of suits and other clothing for men on account of such reputation have a decided preference for such all wool or woolen fabrics over fabrics composed in part of cotton, rayon or other fiber. The unqualified use of the word "wool" has in the minds of the purchasing or consuming public the definite and specific meaning of virgin or unused wool as distinguished from reclaimed wool.

The word "silk" for many years last past has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. The unqualified word "silk" has in the minds of the purchasing and consuming public the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath. Suit lining composed of silk has held and still holds great public esteem and confidence for its wearing qualities and purchasers and prospective purchasers on account of such reputation have decided preference for silk linings over linings composed of cotton, rayon, or other fibers.

The word "rayon" is the name of the chemical fiber or fabric which resembles silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon when not designated as such is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm. When trade or coined name or names designating the method of manufacture are used alone or in conjunction with the word "silk" as descriptive of a rayon fabric or material, such words are not sufficiently known to or understood by the public to be readily identified as designating rayon.

PAR. 8. 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 that the respondent has truthfully represented the constituent fiber or material of his clothing and to cause them to purchase respondent's clothing as the result of the erroneous belief engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, Julius M. Firk, trading as Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., are all to the prejudice of the

public and constitute unfair and deceptive acts and practices 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 a complaint of the Commission and the answer of respondent in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Julius M. Firk, an individual, trading as Strauss Tailoring Co., Federal Tailoring Co., Bell Tailoring Co., and Arlin Tailoring Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's clothing in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are composed of fibers or materials other than those of which they are actually composed; or representing, in any manner, that the fabrics or products manufactured or sold by respondent contain wool in greater quantity, percentage, or degree than is actually the case.

2. Using the words "wool," "woolens," or "worsted," or any other word or words of similar import or meaning, to designate or describe any fabric or other products which are not composed wholly of wool, provided that in the case of a fabric or product composed in part of wool and in part of a material or materials other than wool, such words may be used as descriptive of the wool content, if there is used in immediate connection therewith, in letters of equal size and conspicuousness, a word or words accurately describing and designating each constituent fabric or material thereof in the order of its predominance by weight, beginning with the largest single constituent.

3. Using the unqualified word "silk" or any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

4. Advertising, offering for sale, or selling, fabrics or any other products composed in whole or in part of rayon without clearly dis-

closing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their 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

WEISS BEDDING COMPANY, INC., AND DAN WEISS, JR.

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

Docket 3809. Complaint, June 6, 1939—Decision, Aug. 2, 1939

Where a corporation and an individual, who was president thereof and formulated, controlled, and directed its sales policies and practices, engaged in manufacture, sale, and distribution of mattresses, and acting in cooperation with each other in doing below described acts and things—

Falsely represented constituent fiber and material of their said mattresses, through means of false and misleading statements and representations placed by them on labels attached thereto, and thus, through various other advertising matter and through such statements and representations, among others disseminated, as "This mattress contains 100% cotton felt," "All new and sanitary," and "Complies with all State laws," represented to prospective purchasers that certain of their mattresses were 100 percent cotton felt, and that material therein was all new and sanitary, and that they complied with all State laws;

Facts being they did not contain 100 percent "cotton felt," or product, as understood from said words in mattress trade by wholesalers and retailers selling and distributing such products and by members of purchasing public, made of cotton fibers which had been garnetted together into a mat or web, material contained therein was not all new and sanitary, and said products did not comply with all State laws;

With effect of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and of causing members of said public to buy their said products because of such erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. L. E. Creel, Jr. for the Commission.

Mr. Grover G. Sales, of Louisville, Ky., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Weiss Bedding Co., Inc., a corporation, and Dan Weiss, Jr., an individual, hereinafter referred to as respondents, have violated the provisions of the 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 Weiss Bedding Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with its principal place of business located at 365 Baxter Avenue, in the city of Louisville, State of Kentucky. Respondent Dan Weiss, Jr., whose address is also 365 Baxter Avenue, Louisville, Ky., is an individual and is president of Weiss Bedding Co., Inc., and formulates, controls, and directs its sales policies and practices. Said respondents act together 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 business of the manufacture, sale, and distribution of mattresses. Respondents sell and distribute said merchandise to wholesalers, retailers, and other purchasers thereof. In the course and conduct of their business as aforesaid the respondents cause said merchandise, when sold, to be transported from their aforesaid place of business in the State of Kentucky to the purchasers thereof at their respective points of location in various States of the United States other than Kentucky, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 said business, the respondents have been, and are now, engaged in the practice of falsely representing the constituent fiber and material of their said mattresses by means of false and misleading statements and representations placed by respondents on labels attached to said products and also used by respondents in various other advertising matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid are the following:

This mattress contains 100% cotton felt.
All new and sanitary.
Complies with all State laws.

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondents represent to prospective purchasers situated in various States of the United States and in the District of Columbia, that certain of their mattresses are 100 percent cotton felt, that the material in said mattresses is all new and sanitary, and that said mattresses comply with all State laws.

PAR. 3. The aforesaid statements and representations by the respondents used and disseminated as aforesaid are grossly exaggerated, false, and misleading.

The term "cotton felt," when used in connection with mattresses, has been for many years and is now considered in the mattress trade by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of cotton fibers which have been garnetted together into a mat or web.

In truth and in fact the aforesaid mattresses do not contain 100 percent cotton felt and the material contained in said mattresses is not all new and sanitary. Said mattresses do not comply with all State laws.

PAR. 4. The use by the respondents of the aforesaid false and misleading statements and representations has had and now has the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and causes said members of the purchasing public to purchase respondents' products because of said erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on June 6, 1939, issued and thereafter served its complaint in this proceeding upon respondents Weiss Bedding Co., Inc., a corporation and Dan Weiss, Jr., an individual and president of Weiss Bedding Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 24, 1939, the respondents filed their answer in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on 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 Weiss Bedding Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with its principal place of business located at 365 Baxter Avenue, in the city of Louisville, State of Kentucky. Respondent Dan Weiss, Jr., whose address is also 365 Baxter Avenue, Louisville, Ky., is an individual and is president of Weiss Bedding Co., Inc., and formulates, controls and directs its sales policies and practices. Said respondents act together in cooperation with each other in doing the acts and things hereinafter described.

Respondents have been for more than 1 year last past engaged in the business of the manufacture, sale, and distribution of mattresses. Respondents sell and distribute said merchandise to wholesalers, retailers, and other purchasers thereof. In the course and conduct of their business as aforesaid the respondents cause said merchandise, when sold, to be transported from their aforesaid place of business in the State of Kentucky to the purchasers thereof at their respective points of location in various States of the United States other than Kentucky, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 said business, the respondents, subsequent to March 21, 1938, and prior to August 1938, engaged in the practice of falsely representing the constituent fiber and material of their said mattresses by means of false and misleading statements and representations placed by respondents on labels attached to said products and also used by respondents in various other advertising matter, all of which were distributed in commerce among and between the various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid are the following:

> **This mattress contains 100% cotton felt.**
> All new and sanitary.
> Complies with all State laws.

Through the use of such statements and representations together with other statements of similar import and meaning not herein set out, respondents represented to prospective purchasers situated in various States of the United States and in the District of Columbia, that certain of their mattresses were 100 percent cotton felt, that the material in said mattresses was all new and sanitary, and that said mattresses complied with all State laws.

PAR. 3. The aforesaid statements and representations by the respondents used and disseminated as aforesaid are grossly exaggerated, false, and misleading.

The term "cotton felt," when used in connection with mattresses, has been for many years, and is now, considered in the mattress trade by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of cotton fibers which have been garnetted together into a mat or web.

In truth and in fact the aforesaid mattresses did not contain 100-percent cotton felt and the material contained in said mattresses was not all new and sanitary. Said mattresses did not comply with all State laws.

PAR. 4. The use by the respondents of the aforesaid false and misleading statements and representations had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true, and caused said members of the purchasing public to purchase respondents' products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, 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, Weiss Bedding Co., Inc., a corporation, its officers, and respondent Dan Weiss, Jr., individually and as an officer of Weiss Bedding Co., their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of mattresses in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "cotton felt" or any other term or terms of similar import and meaning alone or in conjunction with any other term or terms to designate, describe, or refer to any mattress or part thereof which is not made of cotton fibers garnetted together into a mat or web.

2. Representing that such mattresses are new or sanitary unless all materials made a part of such mattresses are new or sanitary.

3. Representing that such mattresses comply with all State laws unless and until such mattresses conform with the standards fixed by laws of all the States of the United States of America.

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

T. NOONAN & 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 3640. Complaint, Oct. 28, 1938—Decision, Aug. 3, 1939

Where a corporation engaged in the manufacture, sale and distribution of its "Noonan's Vitamin F Scalp Cream" to members of purchasing public in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of preparations and products designed and intended for treatment, relief, and remedy of the conditions for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their preparations and products or their therapeutic properties, and who do not make any false statements in connection with sale and distribution thereof; in advertisements which it disseminated or caused to be disseminated in commerce, through the mail and otherwise, and which were intended and calculated to induce purchase of its said preparation—

(*a*) Represented directly and through implication that dandruff and itching scalp were usual cause of baldness in the man and impairment in texture or color of the hair in the woman, and that said preparation would permanently eradicate dandruff and itching scalp and invigorate the roots of the hair and prevent the natural oil of the scalp from being lost, and the hair from falling out and would avert baldness and promote growth of new hair and restore unhealthy hair to health; and

(*b*) Represented that "Vitamin F" was essential to a healthy hair or skin and that conditions and ailments of the scalp and hair mentioned, including baldness, were consequences of a dietary deficiency in a so-called "Vitamin F" and that the claimed results from the use of its said product, including stimulation of new hair growth, were induced by presence therein of said vitamin in therapeutically significant quantities and that a majority of the medical and biochemical professions had generally accorded a recognition of the existence, identity, and composition of a certain essentially nutritive factor claimed to be present in its product and called "Vitamin F," such as that accorded by said professions to other such factors and their appellations;

Facts being dandruff and itching scalp are not in all cases cause of baldness nor loss of life and color of the hair as above set forth, use of said product would not permanently eradicate either of aforesaid conditions, any appearance of softness in the texture of the scalp or of restored lustre, beauty, life, and flexibility which it might impart to lifeless, dry, stringy, or brittle hair was but transitory, and it would not invigorate the roots of the hair or accomplish the other results above claimed, and there was no essential nutrition factor generally recognized and characterized by a majority of the medical or biochemical professions as "Vitamin F," and ordinary diet of Americans was such that there was little likelihood of any deficiency in any dietary factor, lack of which might have an adverse effect upon the scalp or hair;

With the result that use of such false advertisements induced, or were likely to induce, purchase of drug and with effect of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true and that its said preparation possessed properties claimed and represented and would accomplish the results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to buy substantial quantities of its said product and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise the effectiveness of their respective preparations and products, as above set forth, to the injury of competition:

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

Mr. R. W. Branch for the Commission.

Yont & Yont, of Boston, Mass., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that T. Noonan & Sons Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 T. Noonan & Sons Co., is a corporation organized under the laws of the Commonwealth of Massachusetts and having its office and principal place of business at 38 Portland Street, city of Boston, Commonwealth of Massachusetts.

Par. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a certain preparation designated as "Noonan's Vitamin F Scalp Cream."

Respondent sells said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the Commonwealth of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States other than the Commonwealth of Massachusetts and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and

between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with individuals, firms, and partnerships selling and distributing preparations and products designed and intended for, and used in, the treatment, relief and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business as aforesaid, respondent has disseminated, or caused to be disseminated, in commerce among and between the various States of the United States and in the District of Columbia, representations through the use of advertisements distributed by the United States mail and by other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its aforesaid preparation in said commerce. Among and typical of said representations so used and disseminated are the following:

Many people, both men and women, constantly suffer from dandruff, itching scalp and falling hair. Such a condition brings on baldness in men. Women with this condition find that their hair becomes lifeless—colorless—

To rid yourself of dandruff—to stop itching scalp—try Noonan's Vitamin F Scalp Cream.

Dandruff will disappear entirely * * *

Noonan's Vitamin F Scalp Cream is—rapidly absorbed by the scalp. It stops the scalp from itching and gives it a soft smooth texture—rids you of all dandruff. Your hair takes on a natural, attractive luster.

Lifeless, dry and brittle hair detracts from natural beauty. Noonan's Vitamin F Scalp Cream restores your hair to its natural beauty, luster and life! It removes dandruff—invigorates the hair roots.

Lifeless, stringy hair? Try this amazing new vitamin treatment.

It—keeps your scalp from losing its natural oil.

Hair receding? Ask your barber for this amazing new vitamin treatment. * * * checks falling hair, promotes new hair growth, restores the hair to a natural healthy condition.

This amazing new scientific preparation for both men and women contains vitamin F * * * the vitamin essential to healthy hair and skin!

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out,

all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that dandruff or itching scalp, singly or in combination, cause baldness in the male and the hair of the female to become lifeless and colorless; that respondent's preparation will impart a soft texture to the scalp, luster to the hair, and will restore beauty and life to lifeless, dry, stringy and brittle hair; that it will invigorate the roots of the hair; that it will prevent the scalp from losing its natural oil; that it will prevent the hair from "receding," check falling hair, and promote new hair growth; that it will prevent baldness; that "vitamin F" is essential to a healthy hair or skin; that the conditions and ailments of the scalp and hair herein mentioned, including baldness, are consequences of a dietary deficiency in a so-called "vitamin F"; that the claimed results from the use of the respondent's preparation, including the stimulation of the growth of new hair, are induced by the presence in the said preparation of a so-called "vitamin F" in therapeutically significant quantity; that a majority of the medical and biochemical professions have generally accorded a recognition of the existence, identity and composition of a certain essential nutritive factor, claimed to be present in respondent's preparation, and its appellation of "vitamin F," equivalent to that accorded by those professions to other such factors and their appellations.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact dandruff and itching scalp, singly or in combination, are not in all cases the cause of baldness in the male nor of the loss of life and color of the hair in the female. The use of respondent's preparation will not permanently eradicate either dandruff or itching scalp. Any appearance of softness in the texture of the scalp or of restored luster, beauty, life, and flexibility which it may impart to lifeless, dry, stringy, or brittle hair is but transitory. It will not invigorate the roots of the hair. It will not prevent loss of the scalp's natural oil. It will not prevent the hair from falling out. It will not prevent baldness, nor will it promote new hair growth. It will not restore health to unhealthy hair. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions of "vitamin F."

The true facts are that the ordinary diet of Americans is such that there is little likelihood of there being any deficiency in any dietary

factor the lack of which may have an adverse effect upon the scalp or hair. In any such event the effect of a local application of such a factor to the skin will be systematic, and will not be directly effective at the place of application.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces, or is likely to induce, directly or indirectly the purchase of a drug.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation, 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. 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 and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of October 1938, issued, and on the 31st day of October 1938, served its complaint in this proceeding upon said respondent, T. Noonan & Sons Co., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving

all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the 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 T. Noonan & Sons Co., is a corporation organized under the laws of the Commonwealth of Massachusetts, and having its office and principal place of business at 38 Portland Street, city of Boston, Commonwealth of Massachusetts.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a certain preparation designated as "Noonan's Vitamin F Scalp Cream."

Respondent sells said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the Commonwealth of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States, other than the Commonwealth of Massachusetts, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations, and with individuals, firms, and partnerships selling and distributing preparations and products designed and intended for, and used in, the treatment, relief, and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of said preparation, respondent has

disseminated, or caused to be disseminated, in commerce, as "commerce" is defined in the Federal Trade Commission Act, through the use of advertisements containing statements distributed by the United States mail and by other means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in said commerce.

PAR. 4. Through said advertisements respondent has made representations with respect to the causes of various conditions of the hair or scalp, the therapeutic properties of said preparation and the results that may be expected to be obtained from its use, of which the following are typical:

Many people, both men and women, constantly suffer from dandruff, itching scalp and falling hair. Such a condition brings on baldness in men. Women with this condition find that their hair becomes lifeless—colorless—.

To rid yourself of dandruff—to stop itching scalp—try Noonan's Vitamin F Scalp Cream.

Dandruff will disappear entirely * * *

Noonan's Vitamin F Scalp Cream is—rapidly absorbed by the scalp. It stops the scalp from itching and gives it a soft smooth texture—rids you of all dandruff. Your hair takes on a natural, attractive luster.

Lifeless, dry and brittle hair detracts from natural beauty. Noonan's Vitamin F Scalp Cream restores your hair to its natural beauty, luster and life! It removes dandruff—invigorates the hair roots.

Lifeless, stringy hair? Try this amazing new vitamin treatment.

It—keeps your scalp from losing its natural oil.

Hair receding? Ask your barber for this amazing new vitamin treatment.

* * * checks falling hair, promotes new hair growth, restores the hair to a natural healthy condition.

This amazing new scientific preparation for both men and women contains vitamin F * * * the vitamin essential to healthy hair and skin.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that dandruff or itching scalp, singly or in combination, cause baldness in the male and the hair of the female to become lifeless and colorless; that respondent's preparation will impart a soft texture to the scalp, luster to the hair, and will restore beauty and life to lifeless, dry, stringy, and brittle hair; that it will invigorate the roots of the hair; that it will prevent the scalp from losing its natural oil; that it will prevent the hair from "receding," check falling hair, and promote new hair growth; that it will prevent baldness; that "vita-

min F" is essential to a healthy hair or skin; that the conditions and ailments of the scalp and hair herein mentioned, including baldness, are consequences of a dietary deficiency in a so-called "vitamin F"; that the claimed results from the use of the respondent's preparation, including the stimulation of the growth of new hair, are induced by the presence in the said preparation of a so-called "vitamin F" in therapeutically significant quantity; that a majority of the medical and biochemical professions have generally accorded a recognition of the existence, identity and composition of a certain essential nutritive factor claimed to be present in respondent's preparation, and its appellation of "Vitamin F," equivalent to that accorded by those professions to other such factors and their appellations.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact, dandruff and itching scalp, singly or in combination, are not in all cases the cause of baldness in the male nor of the loss of life and color of the hair in the female. The use of respondent's preparation will not permanently eradicate either dandruff or itching scalp. Any appearance of softness in the texture of the scalp or of restored luster, beauty, life, and flexibility which it may impart to lifeless, dry, stringy, or brittle hair is but transitory. It will not invigorate the roots of the hair. It will not prevent loss of the scalp's natural oil. It will not prevent the hair from falling out. It will not prevent baldness, nor will it promote new hair growth. It will not restore health to unhealthy hair. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions as "Vitamin F."

The true facts are that the ordinary diet of Americans is such that there is little likelihood of there being any deficiency in any dietary factor the lack of which may have an adverse effect upon the scalp or hair.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces, or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation, 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses

the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 2. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent T. Noonan & Sons Co., are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, T. Noonan & Sons Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a certain medicinal preparation now designated by the name of "Noonan's Vitamin F Scalp Cream," or any other preparation composed of similar ingredients or possessing substantially similar therapeutic qualities whether sold under that designation or any other designation, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the pur-

chase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication that:

(*a*) Dandruff or itching scalp, singly or in combination, are a usual cause of baldness in the male or impairment of the texture or color of the hair in the female, or that the said preparation will permanently eradicate dandruff or itching scalp, invigorate the roots of the hair, prevent the natural oil of the scalp from being lost, and the hair from falling out, avert baldness, promote the growth of new hair, restore unhealthy hair to health, or have more than a transitory effect upon the texture or appearance of the scalp or hair;

(b) Any condition of the hair or scalp is due to a dietary deficiency;

(c) The said preparation contains "vitamin F."

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

JOHN GREY THE FUR DESIGNER, INC.

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

Docket 3658. Complaint, Dec. 9, 1938—Decision, Aug. 3, 1939

Where a corporation engaged in manufacture of patterns for fur coats and fur clothing, chiefly, and in sale and distribution thereof to purchasers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce and in said District, and including many who do not in any manner misrepresent the nature, origin, or design of their said patterns—

Represented, through statements in advertisements, circulars, and booklets distributed among prospective purchasers, and on labels and through use of purported signatures of, and telegrams and cablegrams from, well-known French couturiers, such as "Designed by Molyneux, Rue Royale, Paris," "Typical of Worth," "Silhouette sponsored by Jenny," and others of similar tenor, that their said patterns were manufactured and made in Paris and designed by French designers of said city;

Facts being said patterns were made at its place of business in New York from designs produced by its employees there located, and were not made in Paris or designed by the various famous and outstanding Parisian and French designers whose names were used as above indicated and set forth, and pretended telegrams or cablegrams from whom were wholly fictitious, or by any other person or persons in said city, and persons thus referred to had no connection with the designing or manufacturing of such patterns, which were not Paris fur fashions or patterns or designs of fashions from Paris;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that their said patterns were fashioned, designed, and made in Paris and by well-known French designers, for which higher-priced patterns, in the United States, and particularly those designed by persons named and indicated as aforesaid, and imported, there is a preference on the part of a substantial portion of the purchasing public, and into purchase of said patterns because of such belief, and of thereby diverting trade in commerce unfairly to it from its competitors who do not misrepresent the nature, origin, or design of their said products:

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

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John Grey The Fur Designer, Inc., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John Grey The Fur Designer, 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 at 350 Seventh Avenue, New York City in said State. It is now, and for more than 1 year last past has been, engaged in the manufacture of patterns, chiefly for fur coats and fur clothing, and in the sale and distribution of such patterns in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes such patterns, when sold, to be transported from its place of business in New York, N. Y., 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 1 year last past, a constant current of trade in such patterns in 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, 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 in the sale and distribution of patterns in commerce between and among the various States of the United States and in the District of Columbia. Among these competitors are many who do not in any manner misrepresent the nature, origin, or design of their products.

PAR. 2. In connection with the sale and distribution of said patterns in said commerce, the respondent now represents, and for more than 1 year last past has represented, through statements used in advertisements, in circulars, and in booklets distributed among prospective purchasers of said patterns, that the patterns offered for sale and sold by it were manufactured and made in Paris, France, and designed by French designers in Paris, France. Such representations are also made on labels and through the use of purported signatures of, and telegrams and cablegrams from, well-known French couturiers.

Among others, and typical of the statements and representations so made and used by the respondent, the respondent has made and used the following statements and representations:

Designed by Molyneux, Rue Royale, Paris.
Designed by Schiaparelli, 21 Place Vendome, Paris.
Fourrures designed by Max, Paris.
301—Molyneux.
We call our designs fashions from Paris.
Paris Cables.
Paris 5683 January 6, 1938.
Sending you Paris fur fashions inspired by Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet.
Jenny—Paris.
Use a Paris tie-up for your season's advertising.
Use Paris fur fashions.
Charming turned collar illustrates versatility of Vionnet inspirations.
Typical of Worth.
Silhouette sponsored by Jenny.
Dramatic short topper personifying gaiety of Chanel designs, sprightly rolled collar, trim elbow length, squared shoulder sleeves expression of new spring motif.

The names Molyneux, Schiaparelli, Max, Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet, and Worth, used in said advertising matter are those of famous and well-known French designers located in Paris, France, with outstanding reputations, both in the trade and with the general public, as designers of patterns for fur garments or apparel. The use of such names and the statements in connection therewith as hereinabove set out misleads and deceives prospective purchasers of said patterns into the erroneous belief that the patterns referred to were made or manufactured in Paris, France, from designs produced by the designers named, or that the designs of said patterns were produced by the designers named. In truth and in fact, the patterns referred to in the advertising matter containing the names of said designers and the other statements hereinabove set out were made and manufactured in respondent's place of business in New York, N. Y., from designs produced by employees of the respondent at its said place of business in New York, N. Y., and were not and are not made or manufactured in Paris, France, or designed by either Molyneux, Schiaparelli, Max, Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet, or Worth, or any other person or persons in Paris, France, and no such persons had any connection with the designing or manufacturing of such patterns and such patterns were not and are not Paris fur fashions or patterns of designs of fashions from Paris, France.

Purported telegrams or cablegrams from well-known French designers quoted in said advertisements were and are wholly fictitious and false, having no foundation, in fact, no such telegrams or cablegrams having been received by the respondent.

PAR. 3. There is a preference on the part of a substantial portion of the purchasing public for patterns designed, created and originating in Paris, France, by French designers, more especially those named by the respondent in said advertising matter, and imported into this country, and such patterns command a higher price in the United States than do patterns for fur coats and fur clothes designed and made in the United States.

PAR. 4. The acts and practices of the respondent in making and using the false statements and representations hereinabove alleged have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public and cause it erroneously and mistakenly to believe that said patterns are fashioned, designed, or made in Paris, France, by well-known French designers and, because of said erroneous and mistaken belief, to purchase respondent's said patterns. Thereby trade in said commerce is diverted unfairly to the respondent from its competitors who do not misrepresent the nature, origin, or design of their patterns, to the injury of said competitors and to the injury of the public.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 9, 1938, issued and on December 10, 1938, served its complaint in this proceeding upon respondent, John Grey The Fur Designer, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 John Grey The Fur Designer, 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 at 350 Seventh Avenue, New York City in said State. It is now, and for more than 1 year last past has been, engaged in the manufacture of patterns, chiefly for fur coats and fur clothing, and in the sale and distribution of such patterns in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes such patterns, when sold, to be transported from its place of business in New York, N. Y., 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 1 year last past, a constant current of trade in such patterns in 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, 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 in the sale and distribution of patterns in commerce between and among the various States of the United States and in the District of Columbia. Among these competitors are many who do not in any manner misrepresent the nature, origin, or design of their products.

PAR. 2. In connection with the sale and distribution of said patterns in said commerce, the respondent now represents, and for more than 1 year last past has represented, through statements used in advertisements, in circulars, and in booklets distributed among prospective purchasers of said patterns, that the patterns offered for sale and sold by it were manufactured and made in Paris, France, and designed by French designers in Paris, France. Such representations are also made on labels and through the use of purported signatures of, and telegrams and cablegrams from, well-known French couturiers.

Among others, and typical of the statements and representations so made and used by the respondent, the respondent has made and used the following statements and representations:

Designed by Molyneux, Rue Royale, Paris.
Designed by Schiaparelli, 21 Place Vendome, Paris.
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Sending you Paris fur fashions inspired by Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet.
Jenny—Paris.
Use a Paris tie-up for your season's advertising.
Use Paris fur fashions.
Charming turned collar illustrates versatility of Vionnet inspirations.
Typical of Worth.
Silhouette sponsored by Jenny.
Dramatic short topper personifying gaiety of Chanel designs, sprightly rolled collar, trim elbow length, squared shoulder sleeves expression of new spring motif.

The names Molyneux, Schiaparelli, Max, Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet, and Worth, used in said advertising matter are those of famous and well-known French designers located in Paris, France, with outstanding reputations, both in the trade and with the general public, as designers of patterns for fur garments or apparel. The use of such names and the statements in connection therewith as hereinabove set-out misleads and deceives prospective purchasers of said patterns into the erroneous belief that the patterns referred to were made or manufactured in Paris, France, from designs produced by the designers named, or that the designs of said patterns were produced by the designers named. In truth and in fact, the patterns referred to in the advertising matter containing the names of said designers and the other statements hereinabove set-out were made and manufactured in respondent's place of business in New York, N. Y., from designs produced by employees of the respondent at its said place of business in New York, N. Y., and were not and are not made or manufactured in Paris, France, or designed by either Molyneux, Schiaparelli, Max, Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet, or Worth, or any other person or persons in Paris, France, and no such persons had any connection with the designing or manufacturing of such patterns and such patterns were not and are not Paris fur fashions or patterns of designs of fashions from Paris, France.

Purported telegrams or cablegrams from well-known French designers quoted in said advertisements were and are wholly fictitious and false, having no foundation, in fact, no such telegrams or cablegrams having been received by the respondent.

PAR. 3. There is a preference on the part of a substantial portion of the purchasing public for patterns designed, created, and originating in Paris, France, by French designers, more especially those named by the respondent in said advertising matter, and imported into this country, and such patterns command a higher price in the United States than do patterns for fur coats and fur clothes designed and made in the United States.

PAR. 4. The acts and practices of the respondent in making and using the false statements and representations hereinabove found have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said patterns are fashioned, designed, or made in Paris, France, by well-known French designers and into the purchase of said patterns because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not misrepresent the nature, origin, or design of their patterns.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, John Grey The Fur Designer, Inc., a corporation, its officers, representatives, agents, and employees,

directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its patterns or designs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the word "Paris," either alone or in conjunction with any other word or words, or through the use of any other term or terms indicative of French or other foreign origin, or in any other manner, that clothing patterns or designs which have been made in the United States, have been made in Paris, France; or in any other foreign country.

2. Representing in any manner that clothing patterns or designs which have not been made or designed by Molyneux, Schiaparelli, Max, Paquin, Maggy, Rouff, Chanel, Jenny, Vionnet, or Worth, have been made or designed by such person or persons, or representing that such patterns or designs have been made or designed by any person who is not in fact the actual maker or designer thereof.

3. Using the names of well-known designers of women's clothing, or any other term or terms having the capacity or tendency to deceive the purchasing public as to the identity of the maker or designer of the patterns or designs sold by 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.

IN THE MATTER OF

UNITED EDUCATORS, INC., GENERAL RESEARCH FOUNDATIONS, INC., PUBLISHERS FINANCE COMPANY, INC., WARREN T. DAVIS, JOSEPH J. RINK, AND ELMER C. WOLFORD

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

Docket 3428. Complaint, May 18, 1938—Decision, Aug. 5, 1939

Where three corporations, which were known as United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Co., Inc., and which were carried on as different branches or departments of one business concern, and three individuals who were directors and owners of a controlling interest of said United Educators, Inc., and were general officers thereof, and who controlled and directed the policies and activities of said three companies; engaged in selling and distributing set of reference books known as the "American Educator Encylcopedia," and of certain research services and of loose leaf extension service for use in connection therewith, through numerous salesmen or solicitors whom they employed to canvass individual customers in various States and to forward orders and contracts secured to their office for shipment of books on such orders or contracts, and as thus engaged in making use of said United Educators, Inc., for publication of said encyclopedia and loose leaf service and distribution of units thereof, and of said General Research Foundation, Inc., for supplying said "research service," and of said Publishers Finance Co., Inc., as collection agency or department for United Educators, Inc.; and, as aforesaid engaged, in competition with others likewise engaged in similar business involving sale and distribution of books in interstate commerce—

(*a*) Represented that the volumes of said encyclopedia were free and that the buyer was to pay for and did pay for only loose leaf extension service at stated price, or that said volumes were given free or at an especially low price as part of an advertising program because of prominence of prospective purchaser or for other reasons appealing thereto, or that price at which the units of the offer were being offered and sold was a special price;

Facts being said volumes were not given free nor offered or sold at especially low prices to selected individuals as part of an advertising scheme or otherwise but sales were made of said units, in which the bound volumes of the encyclopedia were an important element, at their then current and usual prices and alleged special prices were such current and usual prices;

(*b*) Represented that instrument presented to prospects for their signature in connection with sale of such units was simply a receipt or an order blank, facts being such instruments were cleverly worded promises to pay certain sums in money, which were of same force and effect as promissory notes, and which purchasers were induced to and did sign in mistaken belief that they were signing simple receipts or orders which were not such notes;

(*c*) Represented that the so-called "research service" was furnished by the General Research Foundation of which purchaser became a member, facts being corporation in question, true name of which was General Research Foundation, Inc., was not an institution supported in whole or in part by disinterested or eleemosynary funds and was not a foundation in sense in which such term or designation is usually used, understood, and accepted by the general public;

(*d*) Represented that purchase price covered entire ultimate cost of the units, facts being purchase price of units, as shown in their contract order forms, did not show entire ultimate cost, but buyers, in addition to prices there stated, were able to obtain quarterly loose leaf extension service issues only by paying 24 cents each and total amount of $9.60 for said service for 10 years, and failed at times to understand that such additional sums for said extension service were required; and

(*e*) Represented to buyers, in order to enforce collection of accounts due on purchase orders for sets of books and services obtained as aforesaid, that such accounts, and aforesaid written instruments evidencing the debts, had been purchased by said Publishers Finance Co., Inc., before maturity and for a valuable consideration from United Educators, Inc., and that said former company was an innocent purchaser of such obligations, and threatened some purchasers with action through local banks and, in case of teacher purchasers, through school authorities, facts being corporation in question was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions;

With result, through such false, misleading, and deceptive statements and representations with respect to terms and conditions upon which said units were sold, nature of said order blank, status of said General Research Foundation, Inc., and terms upon which said loose leaf extension could be obtained, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements and representations were true and into purchase, because of such belief, of substantial quantities of their said books and services and of thereby diverting unfairly trade to them from their competitors in commerce; to the injury of such competition:

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 W. Addison*, trial examiner.

Mr. Wm. T. Chantland, *Mr. James L. Fort* and *Mr. R. W. Branch* for the Commission.

Winston, *Strawn & Shaw*, of Chicago, Ill., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Educators, Inc., is a Delaware corporation chartered in 1931, with offices and principal place of business at 180 North Michigan Avenue, Chicago, Ill., and licensed to do business in the State of Illinois. Respondents Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford have been and are directors and owners of a controlling interest in, and Warren T. Davis has been and is the president, Joseph J. Rink has been and is the vice president, and Elmer C. Wolford has been and is the secretary-treasurer of United Educators, Inc.

Respondent, General Research Foundation, Inc., is an Illinois corporation organized in 1933, under the provisions for corporations not for pecuniary profit. Its offices are with, and it is controlled by and operated as a subsidiary of, and all of its operation expenses are paid by, respondent United Educators, Inc. Respondent Elmer C. Wolford has been and is president and treasurer of respondent General Research Foundation, Inc.

Respondent, Publishers Finance Co., Inc., is an Illinois corporation chartered in 1932, with an authorized capital stock of 100 shares, all of which have been and are owned by respondent, United Educators, Inc. Respondent Elmer C. Wolford has been and is president and treasurer of respondent Publishers Finance Co., Inc.

The policies and activities of respondents, United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Co., Inc., are all controlled and directed by respondents, Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and the activities of said three corporations are carried on as different branches or departments of one business concern.

All of respondents have been for several years last past and now are engaged in the sale, transportation, and distribution in interstate commerce of sets of reference books known as "American Educator Encyclopedia" and other books, and a so-called quarterly loose-leaf extension service for the encyclopedia, and certain research services. The "American Educator Encyclopedia" consists of sets of 10 or 20 volumes, selling during said period at prices from $49.50 to $80 per set, depending upon binding, and said sales prices include extension material or service for a period of 10 years, and the right to the use of a so-called "research bureau" operated under the name of

General Research Foundation. Certain other sets of books have been and are sold in combination with such reference sets, and certain premiums have been and are at times given to obtain larger down payments, and to induce purchases and to aid in collection of delinquent accounts.

PAR. 2. In the course and conduct of their business, respondents have been at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar business involving the sale and distribution of books in interstate commerce.

PAR. 3. In the course and conduct of their business as hereinbefore described, respondents employed and utilized the services of many salesmen or solicitors, varying in number from 25 to several hundred, both men and women, who canvassed individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped from there either directly to the purchasers throughout the various States, or to such solicitor-salesmen for delivery to such purchasers throughout the various States. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to the sales people, are remitted directly to the respondents' offices in Chicago.

PAR. 4. Respondent, Publishers Finance Co., Inc., is now and has been performing the function of a collection agency or collection department for the respondent, United Educators, Inc. In some instances said respondent, Publishers Finance Co., Inc., has falsely represented to purchasers of said books that the amount due and the written instrument evidencing the debt had been purchased by it before maturity and for a valuable consideration from the respondent, United Educators, Inc., and that it was an innocent purchaser of such obligation, and that therefore such purchasers were not entitled to any adjustment of, or in a position to make any defense to, the claim of respondent, Publishers Finance Co., Inc., arising out of said obligation.

In truth and in fact said respondent, Publishers Finance Co., Inc., was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions, and said purchasers were entitled to and could make any and all defenses to the claims of said respondent, Publishers Finance Co., Inc., which such purchasers could have made against the respondent United Educators, Inc.

PAR. 5. To aid their agents or solicitors, and to increase the sale of said books, the respondents have furnished such agents or solicitors with various forms of suggested sales approaches and other printed advertising matter relating to said books. These agents or solicitors as a result of the sales approaches suggested, and the advertising matter supplied, by the respondents have used the following means and methods in soliciting the sale of and in selling said books to the purchasing public:

1. Said agents or solicitors have falsely represented to prospective purchasers that certain items, which were in fact a part of a regular combination offer and included in the price thereof, were being given free to the particular customer for some special reason, thereby influencing such customer to purchase said books. Among such representations was the representation that the books were free, and that the prospective purchaser was to pay for and did pay for only the loose-leaf extension service, whereas, in truth and in fact, the price purported to be charged for the loose-leaf extension service was, and is, the customary and ordinary price charged for said books and the loose-leaf extension service.

2. In many instances the agents or solicitors of the respondents represented to prospective purchasers that, for advertising purposes and as a part of an advertising program, certain of said books were given free, or at an especially low price, because of the alleged prominence of the prospective purchaser, or for some other reason appealing to such prospective purchaser, when in truth and in fact such books were not given free or at an especially low price to such prospective purchaser for any reason, but were sold at the price at which said books are customarily and ordinarily sold by the respondents. This misrepresentation was more frequently made to young women school teachers, to each of whom it was represented that such reference books were necessary to her work and would enhance her standing with the school authorities, and that failure to buy said books would emperil her standing with said school authorities. In some instances these representations were threatening and coercive in their nature. In truth and in fact, said agents or solicitors had no knowledge or information on which to base such representations as to the effect which the purchase or failure to purchase respondents' said books would have on the teacher's standing with the school authorities.

3. Said agents or solicitors on occasion represented to parents of students who had performed some work of special merit in school that such student, as a reward for or in recognition of such work of special merit, would be permitted to purchase said books and

said extension service at a special price, when in truth and in fact the price at which said books and said extension service were offered for sale and sold to the parents of such students was not special, but was the usual and customary price at which said books and said extension service were sold to the public generally.

4. Said agents or solicitors in many instances failed or neglected to inform prospective purchasers that the securing of loose-leaf extension service material entailed an additional cost of 24 cents a copy in addition to the price stated to such prospective purchasers, although said agents or solicitors represented that the stated price included such loose-leaf extension material.

5. The agents or solicitors in many instances represented to prospective purchasers that an instrument presented to such purchasers for signature in connection with the sale of said books was simply a receipt or an order blank, when in truth and in fact said instruments so presented were cleverly worded promises to pay a certain sum in money and are of the same force and effect as a promissory note. Many purchasers were induced to and did sign such promissory note contracts under the mistaken belief that they were signing a simple receipt or order which created no monetary obligation on their part.

6. Said agents or solicitors in many instances represented to prospective purchasers of said books generally that the price at which said loose-leaf extension service and said books were being offered for sale and sold was a special price, when in truth and in fact the price at which said loose-leaf extension service and said books were offered for sale and sold was the usual and customary price at which they were generally sold.

PAR. 6. In an attempt to enforce collection of the amount due on orders obtained as a result of the acts and practices of said agents or solicitors, as hereinabove alleged, in some instances the respondents threatened purchasers with action through local banks and attorneys and, in case of teacher purchasers, through school authorities.

PAR. 7. The respondent, Warren T. Davis, carries on certain of his activities in connection with the business of respondents through a so-called "Child Development Foundation." In truth and in fact, neither the so-called "Child Development Foundation" nor the respondent, General Research Foundation, Inc., is a foundation in the sense in which such term or designation is usually used, understood, and accepted by the general public, that is, as being in whole or in part supported by disinterested or eleemosynary funds. The general public understands and believes that the activities or publications of such foundations are impartial and of especially high value,

and the use of the word "foundation" by the respondents in said names leads the purchasing public to believe that said organizations are foundations in the sense in which this term or designation is used, understood, and accepted by the general public, as hereinabove set forth. In truth and in fact, neither the activities nor the publications of the so-called "Child Development Foundation" or the respondent General Research Foundation, Inc. are impartial or of especially high value.

PAR. 8. Among the competitors of the respondents as described in paragraph 2 hereof are many who do not in any manner misrepresent the price, nature, or the services rendered in connection with their said books and loose-leaf extension service.

PAR. 9. The acts and practices of the respondents as above alleged in the course of selling and offering for sale their books and services in commerce as described herein have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasers into the erroneous belief that said representations are true, and into the purchase of respondents' books and services because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade in said commerce has been unfairly diverted to the respondents from those of their competitors who do not misrepresent their products. 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. 10. 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 18th day of May 1938, issued, and on the 21st day of May 1938, served its complaint in this proceeding upon respondents, United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, 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 any of the respondents. On the 23rd day of July 1938, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the

respondents and their counsel, Winston, Strawn and Shaw, and Wm. T. Chantland, attorney for the Commission, and certain testimony taken in November and December 1936, in the matter of Perpetual Encyclopedia Corporation, and others, Docket No. 1371, and duly recorded and filed in the office of the Commission, may be taken as the facts in this proceeding and in lieu of other testimony in support of the charges stated in the complaint, or in opposition thereto, and that the proceeding will be submitted and decided on the record as stipulated for without further evidence or hearings. On August 5, 1938, said stipulation was introduced in evidence at a hearing before John W. Addison, an examiner of the Commission, theretofore duly designated by it. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence, brief 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. Respondent, United Educators, Inc., is a Delaware corporation, chartered in 1931 with offices and principal place of business at 6 (formerly 180) North Michigan Avenue, Chicago, Ill., and licensed to do business in the State of Illinois. Respondents, Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, have been and are directors and owners of a controlling interest and have been and are, respectively, president, vice president, and secretary-treasurer of United Educators, Inc.

PAR. 2. Respondent, General Research Foundation, Inc., is a corporation organized in 1933 under the provisions of the laws of the State of Illinois applicable to corporations not organized for pecuniary profit. Its offices are with, and it is controlled by and operated as a subsidiary of, and all of its operating expenses are paid by respondent, United Educators, Inc. Respondent, Elmer C. Wolford, has been and is president and treasurer of respondent, General Research Foundation, Inc.

PAR. 3. Respondent, Publishers Finance Co., Inc., is an Illinois corporation chartered in 1932 with an authorized capital stock of 100 shares, all of which have been and are owned by respondent, United Educators, Inc.

PAR. 4. The policies and activities of respondents, United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Com-

pany, Inc., are all controlled and directed by respondents Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and the activities of said three corporations are carried on as different branches or departments of one business concern.

PAR. 5. All of the respondents are now and have been for several years last past engaged in the business of selling and distributing a set of reference books known as the "American Educator Encyclopedia," certain research services in connection therewith, and a loose-leaf extension service therefor.

Sales were made in units, which consisted of a set of the encyclopedia, a right to receive the research service and a right to obtain the loose-leaf extension service. Neither of these services were delivered or contemplated to be delivered simultaneously with the volumes of the encyclopedia. The research service was intended and understood as something to be supplied to the purchasers from time to time as requested. The loose-leaf extension service was to supplement the encyclopedia and was designed to keep this information up to date over a period of years.

The cost of the unit during said period has been from $49.50 to $80, depending upon the number of volumes in which the encyclopedia was bound and the character of the binding. The publication of the encyclopedia, and the loose-leaf service and the distribution of units were through United Educators, Inc., and the "research service" was supplied through the General Research Foundation, Inc. Publishers Finance Co., Inc., acted as a collection agency or department for United Educators, Inc.

PAR. 6. In the course and conduct of their business, as hereinbefore described, respondents employed and utilized the services of many salesmen or solicitors varying in number from 25 to several hundred, both men and women, and canvassed individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped in interstate commerce from there either directly to the purchasers throughout the various States or to such solicitor-salesmen for delivery to such purchasers throughout the various States. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to sales people, are remitted directly to the offices of respondents in Chicago.

PAR. 7. In the course and conduct of their business, respondents have been at all times herein referred to in competition with other corpora-

tions, individuals, firms and partnerships likewise engaged in similar businesses involving the sale and distribution of books in interstate commerce.

PAR. 8. To promote the sale of said books respondents have represented that:

(*a*) The volumes of the encyclopedia were free and the buyer was to pay for and did pay for only loose-leaf extension service at a stated price.

(*b*) The volumes of the encyclopedia were given free or at an especially low price as part of an advertising program because of the prominence of the prospective purchaser or for other reasons appealing to the prospect.

(*c*) The price at which the units were being offered for sale and sold was a special price.

(*d*) An instrument presented to prospects for their signature in connection with the sale of said units was simply a receipt or an order blank.

(*e*) The "research service" was furnished by "The General Research Foundation," of which the purchaser became a member.

(*f*) The purchase price represented the entire ultimate cost of the unit.

PAR. 9. In truth and in fact there were at all times regular prices established by the respondents for the various units at which they were usually and customarily offered and sold. The volumes of the encyclopedia were not given free nor were they offered or sold at especially low prices to selected individuals as a part of an advertising scheme or otherwise. Sales were made of the units in which the bound volumes of the encyclopedia were an important element at respondents' then current and usual prices. Alleged special prices which were offered were in fact respondents' then current and usual prices.

The instruments presented for signature of prospective purchasers in connection with the sale of the units were cleverly worded promises to pay certain sums in money and are of the same force and effect as promissory notes. Purchasers, however, were induced to sign and did sign under the mistaken belief that they were signing simple receipts or orders that were not promissory notes.

The General Research Foundation, the true name of which was "General Research Foundation, Inc.," is not a "foundation" in the sense in which that term or designation is usually used, understood and accepted by the general public, that is, an institution in whole or in part supported by disinterested or eleemosynary funds.

The purchase price of the unit as shown in respondents' contract-order-forms did not show its entire, ultimate cost. In addition to the

price stated in the contract-order-form, buyers were able to obtain the quarterly loose-leaf extension service issues only by paying 24¢ each, aggregating $9.60 for the service for 10 years. Buyers at times failed to understand that they were to pay additional sums for the extension service.

PAR. 10. To enforce collection of accounts due on purchase orders for sets of books and services obtained as aforesaid, respondents represented to the buyers that the accounts due and the said written instruments evidencing the debts had been purchased by respondent, Publishers Finance Co., Inc., before maturity and for a valuable consideration from respondent, United Educators, Inc., and that said Publishers Finance Co., Inc., was an innocent purchaser of such obligations. Respondents threatened some purchasers with action through local banks and attorneys and, in the case of teacher-purchasers, through school authorities.

PAR. 11. Said respondents, Publishers Finance Co., Inc., was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions.

PAR. 12. Respondents utilized the services of many salesmen or solicitors and their sales aggregated 17,937 sets between April 1931 and April 1936. There is evidence that the respondents knew the selling tactics employed by certain of their employees, and in any event the respondents should, if reasonably observant, have known of their use and the Commission so finds. While there is evidence that respondents on occasion cautioned some individual persons in their employ against the use of such practices, such cautions were given after, rather than before, the event. The individual respondents assert that subsequent to December 14, 1936, active steps to put a stop to the sales tactics described herein were taken. The record does not disclose the nature or extent of such steps, and other than this testimony there is no evidence that any general affirmative step was taken by the respondents to prevent the use of these practices prior to May 27, 1937, when a notice with reference to them was sent to all salesmen and solicitors. Prior to that time it appears that respondents' efforts to this end were occasional, and were given personally to a limited number of the numerous solicitors.

PAR. 13. The use by respondents of the foregoing false and misleading statements and representations with respect to the terms and conditions upon which the said units were sold, the nature of its order blank, the status of General Research Foundation, Inc., and the terms upon which the loose-leaf extension could be obtained, has had and

now has the capacity to, and has, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, deceptive and misleading statements and representations are true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said books and services.

As a result thereof trade has been diverted unfairly to the respondents from their competitors in said commerce. In consequence thereof injury has been and is now 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 respondents, United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, have been and are to the prejudice and injury of the public and of competitors of respondents 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 respondents, testimony and other evidence taken before John W. Addison, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, United Educators, Inc., General Research Foundatin, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and each of them, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any books, set of books, or publications, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith 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 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 years, when such is not the fact.

3. Advertising or representing, in any manner, to purchasers or prospective purchasers that any books or set of books are offered at an especially low price, unless and until the price at which the books or set of books are offered is less than the price for which said books or set of books are usually or customarily offered for sale and sold.

4. Representing that any instrument presented to prospective customers for signature in connection with the sale of any books or set of books is a mere receipt or order blank, when such instrument is an agreement to pay a specified sum or sums on a date or dates certain.

5. Representing that any instrument presented to prospective customers for signature in connection with the sale of any books or set of books is not a promissory note, when such instrument contains an agreement by the signer to pay a specified sum or sums on a date or dates certain.

6. Representing that the holder of any instrument acquired in connection with the sale of any books or set of books is a bona fide purchaser for value before maturity, when such is not the fact.

7. Representing as a "foundation" any organization other than one in whole or in part supported by disinterested or eleemosynary funds.

8. Advertising or representing, in any manner, as the purchase price of any books or set of books, together with any loose-leaf extension service therefor, or any other service or article, any sum other than the entire ultimate cost of such books or set of books and service and article to the purchaser.

9. Advertising or representing, in any manner, that any specific sum is, or includes, the price or the full price of any books or set of books together with any right or option to purchase other books, services or articles, unless all the terms and conditions in connection with the exercise of such right or option are clearly and conspicuously stated in immediate connection therewith.

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

OSTREX 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 3354. Complaint, Mar. 11, 1938—Decision, Aug. 8, 1939

Where a corporation engaged in sale and distribution of its "Ostrex" medicinal preparation to wholesale and retail druggists in various States for resale to members of purchasing public, in substantial competition with others engaged in sale and distribution of medicinal and other preparations and products designed and used for the same general purposes for which it represented its said "Ostrex" as effective, as below set forth, and including many who do not in any manner misrepresent their preparations or products or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution; in advertisements which it disseminated through newspapers, publications, and bulletins circulating among the various States and in the District of Columbia—

(*a*) Represented, directly and by implication, that use of said "Ostrex" would build up or regenerate the blood, and that it constituted a competent and effective gland stimulant and invigorator, and that quickest blood-building iron was contained in raw oysters, through such statements, among numerous others, as "Get rid of the weak, exhausted, pepless condition that makes you feel half a man. Get rich red blood * * *," "Get package Ostrex Tablets today. They make you red-blooded, * * * make you feel peppy, younger," "Men get vigor at once * * * One dose peps up organs, glands," and "The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders * * * in highly concentrated form";

Facts being it had no therapeutic value for building up or regenerating blood of persons who were normal as regards blood count, it was not a competent or effective gland stimulant or invigorator for the various glands of the body, except insofar as iodine and calcium contained therein might beneficially affect thyroid or parathyroid glands, was not a competent or effective stimulant or invigorator of any other endocrine glands of the body, and quickest blood-building iron is not found in organic iron contained in raw oysters, but iron in inorganic compounds is better utilized by body to build up and improve blood than is iron contained in organic compounds;

(*b*) Represented that use of said product would carry new life and power to every nerve cell and enliven and revitalize weak organs, and afforded a competent, effective, and reliable method for gaining substantial amount of weight, and was beneficial to the nerves and in treatment of anemia;

Facts being it would not carry new life or power to nerve cells or invigorate or revitalize weak organs as aforesaid, had no value as a method for gaining weight, except insofar as nux vomica therein contained might cause increase in intake of food through stimulating the appetite, and calcium, phosphorus, and iron content might tend to counteract deficiencies in such minerals, and would not beneficially affect nerves of users in those cases of nervous dis-

orders which were caused by or persisted because of conditions other than deficiencies of calcium or phosphorus; and

(c) Represented that said preparation was made from Government-inspected raw oysters;

Facts being it was not made from raw oysters inspected by agents or representatives of the United States Government;

With effect of causing substantial portion of purchasing public to have erroneous and mistaken belief that such statements and representations were true, and that its said preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such belief, to purchase substantial quantities thereof, and with result that, as direct consequence thereof, trade in commerce as aforesaid was diverted unfairly to it from its competitors aforesaid, who truthfully represent the therapeutic value of their respective preparations:

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

Mr. John N. Wheelock 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 Ostrex 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, Ostrex Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business in the city of New York, State of New York.

Par. 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal or pharmaceutical preparation designated as "Ostrex." Respondent sells said preparation to wholesale and retail druggists situated in various States of the United States for ultimate resale to members of the purchasing public, and respondent causes the said preparation, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has main-

tained, a course of trade in said preparation so sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein, other individuals, firms, and corporations in various States of the United States have been and are engaged in the business of selling and distributing various preparations designed and used for the same general purposes for which respondent represents the product "Ostrex" to be effective as herein set forth. Such other individuals, firms, and corporations have caused and do cause their said preparations, when sold by them, to be transported from various States of the United States, to, into and through States other than the State of origin of the shipment thereof to the respective purchasers thereof. In the course and conduct of its business of selling and distributing the preparation "Ostrex" in commerce, as herein described, the respondent has been, during all the times mentioned herein, and is now, in competition with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of its business of selling the preparation "Ostrex" in commerce, as herein described, and in furtherance of the sale thereof, the respondent, during the times mentioned herein, caused statements and representations to appear in newspapers, publications, and bulletins, having an interstate circulation, purporting to be descriptive of said preparation and of its effectiveness in use. In furtherance of the sale of such preparation and to create a public demand therefor, the respondent, during the times mentioned herein, made or caused to be made, the following statements and representations in advertisements inserted in various publications, newspapers, and bulletins having an interstate circulation:

Eating oysters restores the mineral substances, regenerates blood, renews pep, but Ostrex, new tablet tonic, invigorates still more. Made from Government inspected raw oysters, with extra tonic elements added.

Fill out hollow neck and cheeks; get curves; lovely limbs. Gain 5 to 15 pounds in few weeks. Take Ostrex.

I gained 12 pounds in four weeks. Now have fine figure. . . . Thousands can write like above after taking the new discovery, Ostrex Tonic. Contains weight-building iron, calcium, phosphorus and nux vomica advised by doctors. Also contains an amazing invigorator, attained from raw oysters, which stimulates digestive glands to turn more of your food into flesh. Because of this added stimulant, Ostrex builds weight faster. It also puts flesh on people who never could gain before because of weak digestive glands.

Get rid of the weak, exhausted, pepless condition that makes you feel half a man. Get rich red blood. It carries new life and power to every nerve cell and organ. You will feel peppier, younger. Red blood makes you feel new all over.

Ostrex—increase nerve force, enliven weak organs, invigorate glands, brace you up all over.

Don't be old at 40. Take new discovery, Ostrex.

Get package Ostrex Tablets today. They make you red-blooded, give you nerve force, revitalize weak organs and glands, and make you feel peppy, younger.

The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders with added digestive tonics, in highly concentrated form.

Doctors say physical weakness, exhaustion, anemia and other conditions that make you feel old at middle age are due to weak blood. Get rich, red blood—new vigor starts right away. They once advised raw oysters. Now a new discovery, Ostrex, is advised.

Men get vigor at once! New Ostrex Tonic Tablets contain raw oyster invigorators and other stimulants. One dose peps up organs, glands.

The aforesaid statements, together with many others similar thereto not set out herein but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public (1) that the use of said preparation restores and supplies mineral substances such as iron, copper, manganese, calcium, and phosphorus to the human body; (2) that the use of said preparation builds up and regenerates blood, stimulates digestive glands, benefits nerves, and carries new life and power to every nerve cell and enlivens and revitalizes weak organs; (3) that the use of said preparation is a competent, effective, and reliable method for gaining a substantial amount of weight; (4) that said preparation is a competent and effective gland stimulant, invigorator, and aphrodisiac; (5) that the use of said preparation will cure and is beneficial in the treatment of anemia and physical weakness and exhaustion due to weak blood; (6) that said preparation has substantial therapeutic value as a remedy or cure for, or a treatment for, many of the ailments, maladies, diseases, and conditions to which mankind is subject; and (7) that said preparation is made from Government-inspected raw oysters.

PAR. 5. In truth and in fact, the use of the preparation "Ostrex" will not restore or supply mineral substances such as iron, copper, calcium, manganese, and phosphorus to the human body in an amount or amounts sufficient to be of any beneficial value to the user of such preparation. The use of the said preparation will not build up or regenerate the blood; neither will it stimulate digestive glands, benefit nerves, carry new life and power to every nerve cell; nor will it enliven or revitalize weak organs. The use of the said preparation is not a competent, effective, or reliable method for gaining any substantial amount of weight. The said preparation is not a competent or effec-

tive gland stimulant, invigorator, or aphrodisiac. The use of said preparation will not cure anemia, nor does it have any substantial therapeutic value in the treatment of anemia, physical weakness, and exhaustion due to weak blood. The iron contained in the said preparation when taken over a reasonable period of time is not in a quantity sufficient to materially influence the coloring matter of the blood. The quickest blood-building iron is not found in the organic iron contained in raw oysters. The iron contained in the inorganic compounds is better utilized by the body to build up and improve the blood than is the iron contained in the organic compounds.

The said preparation is not made from raw oysters, inspected by agents or representatives of the United States Government.

In truth and in fact, the said preparation has no substantial therapeutic value as a remedy or cure for, or as a treatment for, the ailments, maladies, diseases, and conditions to which mankind is subject as is claimed by the respondent through the representations described in paragraph 4 hereof. All of the statements and representations relative to the therapeutic value of the preparation "Ostrex" as set forth in paragraph 4 hereof are grossly inaccurate, incorrect, exaggerated, and are not true statements of the therapeutic value of the preparation "Ostrex."

PAR. 6. The statements and representations of respondent, as set-out in paragraph 4 hereof, relative to the efficacy of the preparation "Ostrex" have a tendency and capacity to and do confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken beliefs that the preparation "Ostrex" is a remedy or a competent and adequate treatment for the ailments of the human body for which the said preparation is recommended and advertised as aforesaid and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Trade is thereby unfairly diverted to respondent from its said competitors who are engaged in the sale and distribution of preparations designed for similar usage in treating the ailments of the human body for which the respondent recommends its said preparation and who truthfully advertise the extent of the value of their respective preparations. In consequence thereof injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The aforesaid methods, 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 the 11th day of March 1938, issued and thereafter served its complaint in this proceeding upon said respondent, Ostrex Co., Inc., 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 president of the respondent corporation, 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, accepted, and filed, 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, Ostrex Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business in the city of New York, State of New York.

Par. 2. The respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal or pharmaceutical preparation designated as "Ostrex." Respondent sells said preparation to wholesale and retail druggists situated in various States of the United States for ultimate resale to members of the purchasing public. Respondent causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and

at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and used for the same general purposes for which the respondent represents the product Ostrex to be effective as herein set forth. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, respondent has caused advertisements, containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in newspapers, publications, and bulletins having a circulation among and between the various States of the United States and in the District of Columbia. Among and typical of the representations contained in said advertisements so used and disseminated as aforesaid are the following:

Eating oysters restores the mineral substances, regenerates blood, renews pep, but Ostrex, new tablet tonic, invigorates still more. Made from Government inspected raw oysters, with extra tonic elements added.

Fill out hollow neck and cheeks; get curves; lovely limbs. Gain 5 to 15 pounds in few weeks. Take Ostrex.

I gained 12 pounds in four weeks. Now have fine figure. Thousands can write like above after taking the new discovery, Ostrex Tonic. Contains weight-building iron, calcium, phosphorus and nux vomica advised by doctors. Also contains an amazing invigorator, attained from raw oysters, which stimulates digestive glands to turn more of your food into flesh. Because of this added stimulant, Ostrex builds weight faster. It also puts flesh on people who never could gain before because of weak digestive glands.

Get rid of the weak, exhausted, pepless condition that makes you feel half a man. Get rich red blood. It carries new life and power to every nerve cell and organ. You will feel peppier, younger. Red blood makes you feel new all over.

Ostrex—increase nerve force, enliven weak organs, invigorate glands, brace you up all over.

Don't be old at 40. Take new discovery, Ostrex.

Get package Ostrex Tablets today. They make you red-blooded, give you nerve force, revitalize weak organs and glands, and make you feel peppy, younger.

The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders with added digestive tonics, in highly concentrated form.

Doctors say physical weakness, exhaustion, anemia and other conditions that make you feel old at middle age are due to weak blood. Get rich, red blood—new vigor starts right away. They once advised raw oysters. Now a new discovery, Ostrex, is advised.

Men get vigor at once! New Ostrex Tonic Tablets contain raw oyster invigorators and other stimulants. One dose peps up organs, glands.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body, respondent has represented directly and by implication, among other things: that the use of such preparation will build up or regenerate the blood; that the use of such preparation is a competent and effective gland stimulant and invigorator; that the use of such preparation will carry new life and power to every nerve cell and enliven and revitalize weak organs; that the use of such preparation is a competent, effective and reliable method for gaining a substantial amount of weight; that the use of such preparation will benefit the nerves; that the use of such preparation is beneficial in the treatment of anemia; that the quickest blood-building iron is contained in raw oysters; and that such preparation is made from Government-inspected raw oysters.

PAR. 6. In truth and in fact the preparation Ostrex has no therapeutic value for building up or regenerating the blood of persons who are normal as regards blood count or hemoglobin percentage or of persons suffering from types of anemia which cannot be benefited by the administration of iron. Such preparation is not a competent or effective gland stimulant or invigorator for the various glands of the human body except insofar as the iodine and calcium contained in such preparation may beneficially affect the thyroid or parathyroid glands. Such preparation is not a competent or effective stimulant or invigorator of any other endocrine glands of the body. Such preparation will not carry new life and power to nerve cells of the body. The use of such preparation will not invigorate or revitalize weak organs. The use of such preparation has no value as a method for gaining weight except insofar as the nux vomica contained therein may cause an increase in the intake of food by stimulating the appetite and the calcium, phosphorus, and iron contained therein may tend to counteract deficiencies in such minerals.

The use of such preparation will not beneficially affect the nerves of the users thereof in those cases of nervous disorders which are caused by or persist because of conditions other than deficiencies of calcium or phosphorus. The quickest blood-building iron is not found in the organic iron contained in raw oysters. The iron contained in inorganic compounds is better utilized by the body to build up and improve the blood than is the iron contained in the organic compounds. Such preparation is not made from raw oysters inspected by agents or representatives of the United States Government.

PAR. 7. The use by respondent of the foregoing statements and representations, disseminated as aforesaid with respect to said preparation, has had, and now has, the capacity and tendency to, and does, cause a substantial portion of the purchasing public to have the erroneous and mistaken belief that such statements and representations are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said belief, to purchase substantial quantities of respondent's said preparation. As a direct result thereof trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who truthfully represent the therapeutic value of their respective preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 and a stipulation as to the 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, Ostrex Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated "Ostrex" or any other preparation possessing substantially similar therapeutic properties or composed of substantially similar ingredients, whether sold under the same name or any other name or names in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said preparation has any beneficial effect on the blood unless such representation is limited to those cases of persons having an abnormal blood count and hemoglobin percentage and having a type of anemia which may be beneficially affected by the administration of iron.

2. Representing that the use of said preparation is beneficial in stimulating or invigorating any glands of the human body unless such representation is limited to the effectiveness of the iodine and calcium contained in said preparation on the thyroid or parathyroid glands.

3. Representing that said preparation will carry new life and power to nerve cells or will invigorate or revitalize weak organs of the human body.

4. Representing that the use of said preparation is beneficial in increasing weight unless such representation is limited to statements to the effect that said preparation may stimulate the appetite and may counteract deficiencies in calcium, phosphorus, and iron.

5. Representing that the use of said preparation will beneficially affect the nerves unless such representation is limited to those cases of nervous disorders caused by a deficiency of calcium or phosphorus.

6. Representing that the iron contained in raw oysters is more beneficial in building up the blood than iron contained in other forms of organic or inorganic compounds.

7. Representing that said preparation is made from Government-inspected oysters unless and until said preparation is made from oysters which have been inspected and approved by accredited representatives of the United States Government.

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

JAMES HEDDON'S SONS

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

Docket 3792. Complaint, May 16, 1939—Decision, Aug. 8, 1939

Where a corporation engaged in manufacture, distribution, and sale of fishing tackle, including fishing rods, reels, lines, and lures, and in selling its said products to purchasers in other States and in the District of Columbia in substantial competition with others engaged in distribution and sale of similar products of fishing tackle; in advertising its "Pal" hollow seamless steel fishing rod in periodicals of general circulation through various statements and depictions relative to thickness of the walls of its said "Pal" rods as compared to walls of competitive products, and the effectiveness and desirability of its own said product—

(*a*) Represented that all other steel rods had a "THICK WALL at the TIP END" and a "THIN WALL at the BUTT END," whereas its said "Pal" rod had a "THIN WALL at the TIP END" and a "THICK WALL at the BUTT END";

(*b*) Made use of depictions, in connection with assertions aforesaid, which purported to show thickness of other rod at butt and tip as 1/32 and 2/32 inch, respectively, and which showed, for its "Pal" rod, wall thickness of approximately 1/8 inch at butt and 1/32 inch at tip, and accompanied such depictions with such comment as "The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction," and "The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed"; and

(*c*) Set forth, on basis of breakage or durability, asserted results of comparative tests of its said "Pal" rod with other rods tested in connection with aforesaid assertions and depictions, and alleged advantages of its said "Pal" rod, to the very great advantage of the latter, and under statement reading "Which Steel Rod did the Casting-Testers say was 'Best-by-Test?' Four (4) Tubular Steel Casting Rods went to the Casting-testers—look what their tests proved. Note: These Testers are expert casters— * * *," and represented thereby that tests had been made by persons expert in matters involved and who were independent of it, and on the basis of such tests had pronounced its said "Pal" rod as "Best-by-Test";

Facts being other hollow steel casting rods are sold and distributed in commerce which have walls whose thickness tapers from butt to tip, or whose walls are uniform in such thickness, and while some hollow steel casting rods have walls thicker at tip than butt, thickness at former is not ordinarily twice that at latter, thickness of said "Pal" rod at butt was not ordinarily four times that at tip, both depictions were in exaggerated and distorted proportion and had capacity and tendency to engender mistaken and erroneous belief that walls of all such rods other than said "Pal" were disproportionately thick at the tip in comparison to the butt, and that

the walls of said "Pal" at tip were far thinner in comparison with walls of such rods at butt than was in fact the case, said tests were not made by experts independent of it, but by workmen in its employ, and there are many factors which bear upon desirability and utility of casting rod other than its durability, superiority in which, alone, does not furnish sufficient basis for claim of general superiority;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and claims were true, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial numbers of its said "Pal" rods, and of thereby diverting, through use and dissemination of such statements, representations, and claims, trade unfairly to it from competitors, including many who do not misrepresent the thickness of the walls of their respective hollow steel fishing rods or such thickness as compared to that of their competitors' rods, and do not misrepresent nature of tests made relative to the effectiveness in use of their respective products; to the injury of competition in commerce:

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

Mr. R. W. Branch for the Commission.

Banning & Banning, of Chicago, Ill., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that James Heddon's Sons, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it now 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 James Heddon's Son is a corporation organized under the laws of the State of Michigan and having its office and principal place of business in the city of Dowagiac, in the State of Michigan.

Par. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling fishing tackle, including fishing rods, reels, lines, and lures. One of its products is a hollow steel fishing rod referred to by respondent as its "New" or "Improved" Heddon "Pal" rod.

Respondent causes and has caused its said products, when sold, to be transported from its said place of business in the State of Michigan to purchasers thereof located in various States of the United

States other than the State of Michigan and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said fishing tackle 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 said business respondent is now, and has been for more than 3 years last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the distribution and sale of rods, reels, lines, and lures, and other articles generally referred to as fishing tackle, in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the thickness of the walls of their respective hollow steel fishing rods or the thickness of the walls of their said rods as compared to the walls of the hollow steel rods of their competitors, and who do not misrepresent the nature of tests made relative to the effectiveness in use of their respective fishing rods.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said fishing rods, the respondent has caused to be inserted in magazines and other publications having a general circulation throughout the various States of the United States advertisements containing various statements and pictorial representations relative to the thickness of the walls of its hollow steel fishing rods, the thickness of the walls of said rods as compared to the walls of the rods of its competitors and the effectiveness and desirability in use of its said rods. Among and typical of the advertisements by respondent containing the aforesaid false and misleading statements and pictorial representations, disseminated as aforesaid, is an advertisement containing the following statements:

All Other Steel Rods have a Thick Wall at the Tip End and have a Thin Wall at the Butt End.

The New Heddon "Pal" Steel Rod has a Thin Wall at the Tip End and has a Thick Wall at the Butt End.

The foregoing statement relative to all-steel rods other than respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, a depiction of what purports to be a longitudinal cross section of any steel rod other than the "New Heddon Pal," showing a tapered hollow-steel fishing rod having a wall thickness at the tip greater than that at the butt. The foregoing statement relative to respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, what purports to be a longitudinal cross section of the "New Heddon Pal" rod, showing

a tapered hollow-steel fishing rod having a wall thickness at the tip less than that at the base. Both depictions are approximately 7⅞ inches in length and show an outside diameter of approximately 5/16 inch at the base and 3/16 inch at the tip. The depiction first referred to shows wall thicknesses at the butt and tip of approximately 1/32 inch and 2/32 inch respectively; the other depiction shows a wall thickness of approximately ⅛ inch at the butt and 1/32 inch at the tip.

The aforesaid advertisement of respondent also contains the following statements and representations:

The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction.

The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed.

Which Steel Rod did the Casting-Testers say was "Best-by-Test?" Four (4) Tubular Steel Casting Rods went to the Casting-Testers,—look what their tests proved. Note: These Testers are expert casters—* * *

HERE IS THE TESTING REPORT:

Rods Tested	*Result*
1st rod (competitor "A's" Rod)	A Limited number of days. Rod broke.
2nd rod (competitor "B's" Rod)	16% Longer than rod "A". Rod broke.
3rd rod (Old Style Heddon Pal)	50% Longer than rod "A". Rod broke.
4th rod (NEW HEDDON PAL)	Over 400% Longer than Rod A. Rod in fine condition.

PAR. 5. Though the use of the statements, claims, and representations hereinabove set-out and others similar thereto not herein set out, all of which purport to be descriptive of the method of construction of the Improved Heddon Pal rod as distinguished from all other steel casting rods, and its superiority to such other rods, respondent directly and by implication, among other things, has represented: that all hollow-steel fishing rods other than the Improved Heddon Pal have walls which are thicker at the tip than at the butt; that the wall thickness of such rods at the tip is approximately twice that at the butt, whereas the Improved Heddon Pal has a wall thickness at the tip approximately one-fourth that at the butt; that tests have been made by persons expert in the testing of casting rods who are independent of the respondent and that on the basis of such tests persons have pronounced the Improved Heddon Pal as "best-by-test."

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are exaggerated, misleading, and untrue. In truth and in fact there are sold and distributed in commerce among and between the various States of the United States and in the District of Columbia other hollow-steel casting rods which have walls whose thickness tapers from butt to tip and

others whose walls are uniform in thickness from butt to tip. Although some hollow-steel casting rods have walls thicker at the tip than at the butt, the wall thickness at the tip is not ordinarily twice that at the butt. The thickness of the walls of the Heddon Pal rod at the butt is not ordinarily four times that at the tip. Both depicitions are in exaggerated and distorted proportion and have the capacity and tendency to engender the mistaken and erroneous belief that the walls of all hollow-steel rods other than the Heddon Pal are disproportionately thick at the tip in comparison to the butt, and that the walls of the Heddon Pal at the tip are far thinner in comparison with the walls of such rods at the butt than is in fact the case. The tests referred to were not made by experts independent of the respondent but were made by workmen in its employ.

There are many factors which bear upon the desirability and utility of a casting rod other than its durability. Superiority in strength or durability alone does not furnish a sufficient basis for a claim of general superiority.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims disseminated as aforesaid with respect to its Improved Heddon Pal rod 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 and mistaken belief that such false and misleading statements, representations, and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the respondent's Improved Heddon Pal rod.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise their wares, as described in paragraph 3 hereof. 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 and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 16, 1939, issued, and on May

18, 1939, served its complaint in this proceeding upon said respondent, James Heddon's Sons, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 7, 1939, 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 Banning & Banning, counsel for 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 said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and 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, accepted, and filed; 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, James Heddon's Sons, is a corporation organized under the laws of the State of Michigan and having its office and principal place of business in the city of Dowagiac in the State of Michigan. It is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling fishing tackle, including fishing rods, reels, lines, and lures. One of its products is a hollow seamless steel fishing rod referred to by respondent as its "New" or "Improved" Heddon "Pal" rod. In the course and conduct of its business respondent causes and has caused its said products, including the "Pal" rod, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and has maintained at all times mentioned herein, a course of trade in commerce in the said fishing tackle among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent is now, and has been for more than 3 years last past, in substantial competition with other corporations, and with individuals, firms, and partnerships, engaged in the distribution and sale of rods, reels, lines, and lures and other articles generally referred to as fishing tackle 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 said business and for the purpose of inducing the purchase of the said "Pal" fishing rods, respondent has caused to be inserted in magazines having a general circulation throughout the various States of the United States advertisements containing various statements and pictorial representations relative to the thickness of the walls of its hollow-steel fishing rods, the thickness of the walls of said rods as compared to the walls of the rods of its competitors, and the effectiveness and desirability in use of its said rods. Among and typical of the statements and pictorial representations contained in the aforesaid advertisements are the following:

All Other Steel Rods have a THICK WALL at the TIP END and have a THIN WALL at the BUTT END.

The New HEDDON "PAL" Steel Rod has a THIN WALL at the TIP END and has a THICK WALL at the BUTT END.

The foregoing statement relative to all-steel rods other than respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, a depiction of what purports to be a longitudinal cross section of any steel rod other than the "New Heddon Pal," showing a tapered hollow-steel fishing rod having a wall thickness at the tip greater than that at the butt. The foregoing statement relative to respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, what purports to be a longitudinal cross section of the "New Heddon Pal" rod, showing a tapered hollow-steel fishing rod having a wall thickness at the tip less than that at the base. Both depictions are approximately 7⅞ inches in length and show an outside diameter of approximately $\frac{9}{16}$-inch at the base and $\frac{3}{16}$-inch at the tip. The depiction first referred to shows wall thicknesses at the butt and tip of approximately $\frac{1}{32}$-inch and $\frac{2}{32}$-inch respectively; the other depiction shows a wall thickness of approximately ⅛-inch at the butt and $\frac{1}{32}$-inch at the tip.

The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction.

The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed.

Which Steel Rod did the Casting-Testers say was 'Best-by-Test'? Four (4) Tubular Steel Casting Rods went to the Casting-testers—look what their tests proved. Note: These Testers are expert casters— * * *

HERE IS THE TESTING REPORT:

Rods Tested	*Result*
1st rod (competitor "A's" Rod)	A Limited number of days. Rod broke.
2nd rod (competitor "B's" Rod)	16% Longer than rod "A". Rod broke.
3rd Rod (Old Style Heddon Pal)	50% Longer than rod "A". Rod broke.
4th rod (NEW HEDDON PAL)	Over 400% Longer than rod "A". Rod in fine condition.

PAR. 4. Through the use of the statements, claims, and representations hereinabove set-out and others similar thereto not herein set-out, all of which purport to be descriptive of the method of construction of the Improved Heddon Pal rod as distinguished from all other steel casting rods and its superiority to such other rods, respondent directly and by implication, among other things, has represented: that all hollow-steel fishing rods other than the Improved Heddon Pal have walls which are thicker at the tip than at the butt; that the wall thickness of such rods at the tip is approximately twice that at the butt, whereas the Improved Heddon Pal has a wall thickness at the tip approximately one-fourth that at the butt; that tests have been made by persons expert in the testing of casting rods who are independent of the respondent and that on the basis of such tests such persons have pronounced the Improved Heddon Pal as "best-by-test."

PAR. 5. The representations made by respondent, directly and by implication, used and disseminated by respondent in the manner described, are exaggerated, misleading, and untrue. In truth and in fact there are sold and distributed in commerce among and between the various States of the United States and in the District of Columbia other hollow-steel casting rods which have walls whose thickness tapers from butt to tip and others whose walls are uniform in thickness from butt to tip. Although some hollow-steel casting rods have walls thicker at the tip than at the butt, the wall thickness at the tip is not ordinarily twice that at the butt. The thickness of the walls of the Heddon Pal rod at the butt is not ordinarily four times that at the tip. Both depictions are in exaggerated and distorted proportion and have the capacity and tendency to engender the mistaken and erroneous belief that the walls of all hollow-steel rods other than the Heddon Pal are disproportionately thick at the tip in comparison to the butt, and that the walls of the Heddon Pal at the

tip are far thinner in comparison with the walls of such rods at the butt than is in fact the case. The tests referred to were not made by experts independent of the respondent but were made by workmen in its employ.

There are many factors which bear upon the desirability and utility of a casting rod other than its durability. Superiority in strength or durability alone does not furnish a sufficient basis for a claim of general superiority.

PAR. 6. The use by the respondent of the foregoing statements, representations, and claims disseminated as aforesaid with respect to its Improved Heddon Pal rod 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 and mistaken belief that such statements, representations, and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the respondent's Improved Heddon Pal rod.

Among respondent's competitors are many who do not misrepresent the thickness of the walls of their respective hollow-steel fishing rods, or the thickness of the walls of their said rods as compared to the walls of the hollow-steel rods of their competitors, and who do not misrepresent the nature of tests made relative to the effectiveness in use of their respective fishing rods. From such competitors, as a result of respondent's use and dissemination of the aforesaid statements, representations, and claims, trade has been diverted unfairly to the respondent. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST [1]

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 entered into between the

[1] Par. 1 of order published as modified by order dated November 13, 1939.

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, James Heddon's Sons, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its Improved Heddon Pal hollow-steel fishing rod, or other fishing rods, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that all hollow-steel fishing rods, other than respondent's hollow-steel rods, have walls which are thicker at the tip than at the butt.

2. Using any depiction, pictorial representation, or other advertisement which shows in incorrect proportion the relative thickness of the walls at the tip and butt of respondent's or other hollow-steel fishing rods, or any section or sections thereof.

3. Stating the results of, or making representations relative to, tests of respondent's or other fishing rods, unless such tests were made by competent persons independent of respondent, provided that if such tests are made by persons not independent of respondent, there must be stated in direct connection therewith, in words of equal conspicuousness, the connection of such persons with respondent.

4. Representing that the results of comparative tests of respondent's fishing rods with other rods show respondent's rods to be superior unless and until such is the fact and unless such representation is limited to the superiority of respondent's rods in only those factors proven by such tests.

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

USONA SHIRT COMPANY

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

Docket 3842. Complaint, July 6, 1939—Decision, Aug. 8, 1939

Where a corporation engaged in sale and distribution of various grades and types of textile fabrics, including men's shirts, to members of purchasing public in various States and in the District of Columbia; in furtherance of practice of representing falsely condition and constituent fiber or material of which various products sold and distributed by it were made, through false representations on labels attached to its products and in various advertising matter, and, in said connection, of inserting in catalogs, price lists, and other advertising matter distributed among prospective purchasers situated in the various States and in said District, false statements and representations purporting to be descriptive of its said products as aforesaid—

(*a*) Represented, as typical, that certain of its products were "shrunk," "preshrunk," or "full shrunk," through use of said words on labels thereof, and that such garments thus labeled were made from shrink-proof or nonshrinkable cloth, or from cloth which had been shrunk to such an extent that no residual shrinkage was left therein, facts being products thus marked, stamped, labeled, and advertised were not made of such cloth, and said cloth from which such products were made had not in fact been fully shrunk to the extent that no residual shrinkage was left remaining in goods concerned; and

(*b*) Represented, as typical, to purchasing and consuming public, that its said products were made especially for each individual customer, through using, on labels and in catalogs, term "custom made," notwithstanding fact they were manufactured in same way that ready-made shirts are ordinarily manufactured;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous beliefs that it had truthfully represented condition of constituent fiber or material of which its various products were made, and that they were in fact custom made, and with result, by reason of such erroneous and mistaken beliefs, that number of consuming public purchased substantial volume of its products, and trade was diverted unfairly to it from its competitors also engaged in sale and distribution in commerce as aforesaid of various grades and types of textile fabrics and both custom-made and ready-made shirts:

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

Mr. James L. Fort for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Usona Shirt Co., a corporation, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Usona Shirt Co., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 230 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for a year or more last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics, among which are men's shirts. The respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products when sold by it to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein 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. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with individuals, firms, and partnerships engaged in the business of selling and distributing various grades and types of textile fabrics and men's shirts 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 its said business, the respondent has engaged in the practice of falsely representing the constituent fiber or material, and the condition thereof, of which the various products sold and distributed by it are made, by means of false representations on labels attached to its products and in various advertising matter. In furtherance of this practice and for the purpose of inducing the purchase of its said products, respondent has caused false statements and representations purporting to be descriptive of such products and the condition of their respective constituent fiber or material to be inserted in catalogues, price lists and in other advertising

matter distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, the respondent represented certain of its products, by the use of labels thereon, as being "shrunk," "preshrunk," or "full shrunk," and represented that said garments so labeled were made from shrink-proof or nonshrinkable cloth, or from cloth which had been shrunk to such an extent that no residual shrinkage was left in such cloth.

PAR. 6. In truth and in fact, the products so marked, stamped, labeled and advertised as described in paragraph 5 hereof, were not made of shrink-proof, nonshrinkable cloth, and such cloth from which said products were made had not in fact been fully shrunk to the extent that no residual shrinkage was left remaining in such goods.

PAR. 7. Another and typical act and practice engaged in by the respondent in falsely representing its products is the use on labels and in catalogues, distributed as aforesaid, of the term "custom-made," thereby representing to the purchasing and consuming public that its said products were made especially for each individual customer, when in truth and in fact such products were manufactured in the same way that ready-made shirts are ordinarily manufactured.

PAR. 8. The use by the respondent of the aforesaid acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that the respondent has truthfully represented the condition of the constituent fiber or material of its various products and that such products are in fact custom made. On account of such erroneous and mistaken beliefs, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of various grades and types of textile fabrics and both custom made and ready-made shirts. As a consequence 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. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 6, 1939, issued, and on July 7, 1939, served its complaint in this proceeding upon respondent, Usona Shirt Co., charging it with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 25, 1939, respondent filed its answer in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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, Usona Shirt Co., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 230 Fifth Avenue, in the city of New York, State of New York.

Par. 2. Respondent is now, and for a year or more last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics, among which are men's shirts. The respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein 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. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with individuals, firms, and partnerships engaged in the business of selling and distributing various grades and types of textile fabrics and men's shirts 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 its said business, the respondent has engaged in the practice of falsely representing the constitutent fiber or material, and the condition thereof, of which the various products sold and distributed by it are made, by means of false representations on labels attached to its products and in various advertising matter. In the furtherance of this practice, and for the purpose of inducing the purchase of its said products, respondent has caused false statements and representations purporting to be descriptive of such products and the condition of their respective constituent fiber or material to be inserted in catalogs, price lists, and in other advertising matter distributed among prospective purchasers of said products situated in the various States of the United States and in the District of Columbia.

PAR. 5. Among, and typical of, the acts and practices above described, respondent represented certain of its products, by the use of labels thereon, as being "shrunk" "preshrunk," or "full shrunk," and represented that said garments so labeled were made from shrink-proof of nonshrinkable cloth, or from cloth which had been shrunk to such an extent that no residual shrinkage was left in such cloth.

PAR. 6. In truth and in fact, the products so marked, stamped, labeled, and advertised as described in paragraph 5 hereof, were not made of shrink-proof or nonshrinkable cloth, and such cloth from which said products were made had not in fact been fully shrunk to the extent that no residual shrinkage was left remaining in such goods.

PAR. 7. Another, and typical, act and practice engaged in by the respondent in falsely representing its products is the use, on labels and in catalogs distributed as aforesaid, of the term "custom-made," thereby representing to the purchasing and consuming public that its said products were made especially for each individual customer, when in truth and in fact such products were manufactured in the same way that ready-made shirts are ordinarily manufactured.

PAR. 8. The use by the respondent of the aforesaid acts and practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that the respondent has truthfully represented the condition of the constituent fiber or material of which its various products are made, and that such products are, in fact, custom made. On account of such erroneous and mistaken beliefs, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to the respondent from its competitors who are also engaged in the sale and distribution in commerce between and among the various States of

the United States and in the District of Columbia of various grades and types of textile fabrics and both custom made and ready made shirts.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the said facts, 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, Usona Shirt Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of textile fabrics including men's shirts and other like articles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "shrunk," "preshrunk," or "full shrunk," or any other words or terms of similar import or meaning, to describe, designate, or in any way refer to, any fabric which is not in fact shrinkproof or nonshrinkable, or which has not been fully shrunk or preshrunk to the extent that no residual shrinkage is left therein.

2. Using the words "custom-made," or any other words or terms of similar import and meaning, to designate, describe, or in any way refer to, shirts or other products which are not made especially for each individual customer.

3. Representing that respondent's products possess a quality, grade, character or condition superior to or different from that which they actually possess.

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

IN THE MATTER OF

ZO-RO-LO, INC.

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

Docket 3030. Complaint, Jan. 8, 1937—Decision, Aug. 12, 1939

Where a corporation engaged in manufacture of its "Zo-Ro-Lo" liquid medicinal preparation, for use, as represented by it, by members of consuming public afflicted with diabetes, arthritis and various other ailments and conditions, and in sale thereof to purchasers at wholesale, authorized to use said name "Zo-Ro-Lo" in their trade names, and by mail direct to consumers; in advertisements in booklets, blotters and other printed matter distributed to members of purchasing public in various States and in broadcasts from radio stations of extrastate audience, and through authorized use by distributors of trade name as aforesaid, and in other ways—

(*a*) Represented that said preparation was a cure or remedy for arthritis, asthma, brain disease, Bright's Disease, diabetes, acidity, epileptic convulsions, gall stones, inward goitre, rheumatism, neuritis, sciatica, or sinus, kidney or prostate gland trouble;

(*b*) Represented that said "Zo-Ro-Lo" neutralized toxic poison, relieved all pain, or had therapeutic value in the treatment of ailments which are due to intestinal auto-intoxication; and

(*c*) Represented that said preparation was beneficial in starting one on the road to health, and in building up resistance to combat the cause of disease;

Facts being said "Zo-Ro-Lo" was no more than a mild laxative, taken in small doses, or purgative, if concentration of salts was high and dose large, had, aside from foregoing, no therapeutic value, and did not tend to neutralize toxic poisons or eliminate cause of majority of diseases, had no therapeutic value in treatment of ailments which were due to intestinal auto-intoxication other than as laxative or purgative, 90 percent of all human ailments are not, as represented by it, traceable to toxins formed in colon by auto-intoxication caused by putrefaction of uneliminated waste products, it was not a cure or remedy for rheumatism or rheumatic fever, caused by infection and defective alimentation, nor for arthritis, for which no cure or remedy is known, nor for various other ailments and conditions above specified, other than as aforesaid noted, nor for general paresis or other mental conditions associated with organic or functional disturbances in the nervous system;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that all said representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced through such advertising and representations, of causing consuming public to purchase substantial volume of said "Zo-Ro-Lo," and of thereby diverting trade unfairly to it from others engaged in sale, in commerce among the various States, of products intended to be used for like and similar purposes, and who truthfully advertise the same:

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

Before *Mr. Miles J. Furnas*, *Mr. Robert S. Hall* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. William L. Pencke, *Mr. George Foulkes* and *Mr. Robert Mathis, Jr.* for the Commission.

Lippincott & Lippincott, of Lima, Ohio, for respondent.

Complaint

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Zo-Ro-Lo, 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, Zo-Ro-Lo, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Ada, State of Ohio. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling a medicinal preparation under the trade name of "Zo-Ro-Lo", which respondent distributes to purchasers, many of whom reside in states other than the State of Ohio, and when orders are received therefor, they are filled by respondent by shipping said medicinal preparation to purchasers, from the said city of Ada, Ohio, into and through other States of the United States and in the District of Columbia. There is now, and has been during the time herein before mentioned, a constant current of trade in commerce in said medicinal preparation, so distributed and sold by respondent, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, said respondent was and is in substantial competition with other corporations, firms, partnerships, and individuals, likewise engaged in the sale and distribution of medicinal preparations, designed and intended for treatment of the same ailments for which respondent advertises Zo-Ro-Lo

to be a remedy, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of said business and for the purposes of inducing individuals to purchase Zo-Ro-Lo, respondent has caused advertisements to be inserted in pamphlets and circulars, and has caused statements to be made over radio broadcasts, which pamphlets, circulars, and statements respondent has circulated in States other than the State of Ohio. In said pamphlets, circulars, and over said radio broadcasts, respondent has represented that its medicinal preparation is a competent and effective treatment or cure for various ailments. Among the representations made through such media are the following:

Inflammation of the muscles is called Rheumatism, nerve inflammation is called Neuritis, and when the sciatic nerve is attacked, it is called Sciatica. But whether you have Rheumatism, Neuritis, or Sciatica, the cause is the same—Toxemia. Why not get rid of those aches and pains? Why not enjoy life again? Through the wonderful Zo-Ro-Lo health Treatment. You can start on the Zo-Ro-Lo road to health for only $1.50.

Zo-Ro-Lo means renewed health—renewed health means happiness—health and happiness make the gift supreme.

If you have asthma, don't dope yourself with drugs. Let Zo-Ro-Lo remove the cause.

Zo-Ro-Lo is nature's preventative, as well as nature's curative medicine.

Zo-Ro-Lo tends to eliminate the cause of the majority of all diseases.

All of the said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the remedial and curative quality of Zo-Ro-Lo. In all of its advertising pamphlets, circulars, and over radio broadcasts, respondent represents through statements and representations herein set out, and others similar thereto, that Zo-Ro-Lo is an effective cure and remedy for (*a*) arthritis, (*b*) asthma, (*c*) brain disease, (*d*) Bright's disease, (*e*) diabetes, (*f*) epileptic convulsions, (*g*) gall stones, (*h*) inward goiter, (*i*) kidney trouble, (*j*) prostate gland trouble, (*k*) sinus trouble.

Respondent further represents that Zo-Ro-Lo (*a*) starts one on the road to health, (*b*) is a cure for rheumatism, neuritis, and sciatica, (*c*) relieves all pain, (*d*) builds up a resistance to combat the cause of a majority of all diseases, (*e*) neutralizes toxic poisons, (*f*) overcomes acidity, (g) is a scientific preparation designed to aid nature in the treatment of many ailments which are traceable to intestinal auto intoxication.

PAR. 3. Representations made by said respondent with respect to the curative and remedial qualities of Zo-Ro-Lo when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact,

Zo-Ro-Lo is not an effective cure and remedy for arthritis, asthma, brain disease, Bright's disease, diabetes, or epileptic convulsions. Zo-Ro-Lo is not an effective cure and remedy for gall stones, inward goiter, kidney trouble, prostate gland or sinus trouble. In truth and in fact, Zo-Ro-Lo does not start one on the road to health, and it is not a cure for rheumatism, neuritis, and sciatica. Zo-Ro-Lo does not relieve all pain or build up a resistance to combat the cause of a majority of all diseases. Zo-Ro-Lo does not neutralize toxic poisons or overcome acidity. In truth and in fact, Zo-Ro-Lo is not a scientific preparation designed to aid nature in the treatment of many ailments which are traceable to intestinal auto intoxication.

PAR. 4. Each and all of the false and misleading statements and misrepresentations made by respondent, as herein above set forth, in its advertising matter and over the radio in offering for sale and selling Zo-Ro-Lo, 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 the said representations are true. Further, as a direct consequence of the stated mistaken and erroneous beliefs, induced by the misleading advertisements, representations and statements of respondent, as herein above enumerated, a number of the purchasing public purchased a substantial volume of the respondent's product with the result that trade has been unfairly diverted to respondent from corporations, firms, partnerships, and individuals, likewise engaged in the selling of medicinal preparations, designed and intended for the treatment of the same diseases and conditions of the human body for which respondent's product is represented to be an effective cure and remedy, who truthfully advertise their respective products. As a result thereof, substantial injury has been done, and is being done, by the respondent 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 the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and are unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 8, 1937, issued and served its complaint in this proceeding upon the respondent, Zo-Ro-Lo, Inc.,

charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, said Zo-Ro-Lo, Inc., filed its answer to the complaint.

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 L. Pencke and George Foulkes, attorneys for the Federal Trade Commission, and in opposition to the allegations of the complaint by Eugene T. Lippincott, attorney for the respondent, before Miles J. Furnas, Robert S. Hall, and Arthur F. Thomas, examiners 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 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 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, Zo-Ro-Lo, Inc., is a corporation organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at Ada, Ohio. It is now, and has been for several years last past, engaged in the manufacture and sale of a liquid medicinal preparation under the designation "Zo-Ro-Lo," which respondent represents to be for use by the members of the consuming public who are afflicted with diabetes, arthritis, rheumatism, sciatica, neuritis, neuralgia, acidosis, dyspepsia, some forms of headaches, colds, constipation, indigestion, sour stomach, gas condition and many other ailments. Respondent distributes its product at wholesale to purchasers who are authorized to use the name "Zo-Ro-Lo" in their trade names and also by mail direct to the consumers.

PAR. 2. Respondent causes said product, "Zo-Ro-Lo," when sold, to be transported from its place of business in Ada, Ohio, to purchasers thereof located in Kentucky, West Virginia, and in other States of the United States. There is now and has been during the time hereinabove mentioned a course of trade in commerce in said medicinal preparation so described and sold by respondent between and among the various States of the United States.

PAR. 3. Respondent is now, and has been, at all times mentioned herein, engaged in substantial competition with other corporations and with firms, partnerships and individuals also engaged in the sale and distribution in commerce between and among the various States of the United States of medicinal preparations designed for the treatment of the ills, maladies, and conditions of the human body, for which respondent represents "Zo-Ro-Lo" to be a cure and remedy.

PAR. 4. Respondent, in soliciting the sale of and in selling its said product and for the purpose of creating a demand therefor, has caused, during the times mentioned herein, advertisements, relative to said preparation, to be inserted in booklets, blotters and other printed matter distributed to members of the purchasing public situated in various States of the United States and in radio broadcasts from radio stations which convey the programs emanating therefrom to listeners thereto situated in States other than that from which the broadcasts originate and by authorizing distributors to use the trade name embracing the term "Zo-Ro-Lo" and in other ways.

PAR. 5. Among and typical of the statements disseminated as aforesaid by respondent relative to alleged curative and remedial qualities of said preparation are the following:

Zo-Ro-Lo of Columbus.

Zo-Ro-Lo has aided in the relief of many cases of asthma of long years standing. It attacked the Cause of many types of asthma.

* * * There is no other medicine like Zo-Ro-Lo. It is different and years ahead. Zo-Ro-Lo neutralizes toxic poisons—overcomes acidity—and gently washes away the poisonous wastes. In order words—Zo-Ro-Lo tends to eliminate the cause of the majority of all disease. * * *

* * * If you have Diabetes—doubtless you have experimented with many remedies—you have spent a great deal of money—and probably—you have secured very little relief. We want you to know there is relief for you in the Zo-Ro-Lo health treatment. Thousands of Diabetics have been made sugar free—have stopped taking Insulin—by Zo-Ro-Lo. You can do the same. Zo-Ro-Lo is a scientific remedy, made from nature's finest ingredients. Zo-Ro-Lo has stood the test of time. Zo-Ro-Lo is not an expensive remedy. Why don't you get sugar free? Why don't you stop taking Insulin? Why don't you enjoy health and happiness again? There are over one thousand druggists in Ohio authorized to sell Zo-Ro-Lo. * * *

* * * Zo-Ro-Lo is a happy combination of ingredients well known to medical science, and through years of experimentation the proper proportions of each has been discovered. It is this fixed proportion of each that is the key to the great success of this medicine. * * *

ARTHRITIS

* * * In scores of cases, after all other remedies had failed, and the victims had given up hope, Zo-Ro-Lo has been amazingly beneficial. Former helpless cripples are today well and happy.

RHEUMATISM

* * * Zo-Ro-Lo attacks Rheumatism at its source. Results secured by hundreds of sufferers are so exceptional as to be almost incredible in some instances.

ACIDOSIS

* * * Zo-Ro-Lo contains the proper ingredients to aid in the re-establishment of acid balance and has been found to be a wonderful relief in Acidosis.

HEALTH

* * * Physicians agree that about 90 per cent of our common ailments are caused through intestinal auto-intoxication. Among these are Arthritis, Rheumatism, Sciatica, Neuritis, Neuralgia, Acidosis, Dyspepsia, some forms of Headaches, Colds, Constipation, Indigestion, Sour Stomach, Gas Condition and many others.

Then nature needs scientific assistance to free the system of the accumulated poisons and to restore a balanced process of metabolism. A mere laxative will not do it. It must be an agent that will stimulate naturally organs and glands, such as the pancreas, liver, gall bladder, intestines, etc. Zo-Ro-Lo is that ideal agent. It contains valuable ingredients nature needs in correct proportion. It contains no alcohol nor narcotic drugs. Its action is gentle, never violent, yet thorough. It aims at permanent relief by aiding Nature in attacking the cause of disease, whence the Zo-Ro-Lo slogan:

"REMOVE THE CAUSE—NATURE WILL DO THE REST."

Nervousness and Arthritis conquered by Zo-Ro-Lo.

Given up to die from brain disease—lost fifty-five pounds—now restored to glorious health.

Epileptic convulsions have not returned since taking the Zo-Ro-Lo treatment.

Was told he could not live—suffered with gall stones—now relieved.

Zo-Ro-Lo relieved me of inward goitre and other ailments.

Kidney trouble of eight years' duration responds to Zo-Ro-Lo.

Relieved of diabetes and prostate gland trouble.

Suffered with sinus infection for twenty-five years—gets relief through Zo-Ro-Lo.

Zo-Ro-Lo—A valuable medicine designed to assist nature in the relief of arthritis, rheumatism, sciatica, neuritis, constipation, high blood pressure, fatigue, indigestion, bloating, headaches, dizziness, biliousness, shortness of breath, sluggishness, jaundice, goitre, asthma, hay fever, acidosis, eczema, and many other ailments arising from faulty elimination.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the remedial and curative qualities of "Zo-Ro-Lo." In its advertising pamphlets, circulars and over radio broadcasts, respondent represents through statements and representations herein set out, and others similar thereto, that "Zo-Ro-Lo" is an effective cure and remedy for (*a*) arthritis, (*b*) asthma, (*c*) brain disease, (*d*) Bright's disease, (*e*) diabetes, (*f*) epileptic convulsion, (*g*) gall stones, (*h*) inward goitre, (*i*) kidney trouble, (*j*) prostate gland trouble, (*k*) sinus

trouble, and (*l*) is a scientific preparation designed to aid nature in the treatment of many ailments which are traceable to intestinal auto-intoxication.

Respondent further represents that "Zo-Ro-Lo" (*a*) starts one on the road to health, (*b*) is a cure for rheumatism, neuritis, and sciatica, (*c*) relieves all pain; (*d*) builds up a resistance to combat the cause of a majority of all diseases, (*e*) neutralizes toxic poisons, and (*f*) overcomes acidity.

PAR. 6. It appears from the testimony herein that "Zo-Ro-Lo" contains natural mineral salts, magnesium citrate, a substitute for sugar and menthol. "Zo-Ro-Lo" is no more than a mild laxative if taken in small doses, or a purgative if the concentrate of the salts is high and the dose is large. Beyond that, it has no therapeutic value and does not tend to neutralize toxic poisons or eliminate the cause of the majority of diseases. Said preparation has no therapeutic value in the treatment of ailments which are due to intestinal auto-intoxication other than as a laxative or purgative. In truth and in fact 90 percent of all human ailments are not traceable to toxins formed in the colon by auto-intoxication caused by putrefaction of the uneliminated waste products.

There is no known cure or remedy for arthritis. A laxative is not a cure or a remedy for arthritis, regardless of the cause. Rheumatism is rheumatic fever, caused by infection and defective alimentation. There is no constituent in "Zo-Ro-Lo" that has any effect on the micro-organisms responsible for rheumatic fever, nor is "Zo-Ro-Lo" a competent cure, remedy, or treatment for rheumatic fever. "Zo-Ro-Lo" is not a cure or remedy for Bright's disease, diabetes, sciatica, neuritis, asthma, epileptic convulsions or sinus, kidney or prostate gland trouble. There is no disease that can be described as "brain disease" but general paresis is a brain disease or mental condition due to syphilis, and "Zo-Ro-Lo" is not a cure, remedy or treatment for general paresis, or any other mental conditions which are associated with organic or functional disturbances in the nervous system.

There is no constituent in "Zo-Ro-Lo" that will remove the cause of, or cure, goitre or gall stones. In the treatment of acidity, "Zo-Ro-Lo" has no beneficial effect.

PAR. 7. Each and all of the false and misleading claims and representations made by the respondent, as aforesaid, by means of advertisements, radio broadcasts and in other ways in offering for sale and selling "Zo-Ro-Lo," were and are calculated to, and have had, and now have, the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the belief that all said representations are true.

PAR. 8. Respondent, as a direct consequence of such mistaken and erroneous belief, induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said preparation known as "Zo-Ro-Lo," with the result that trade has been diverted unfairly to respondent from other corporations and from firms, partnerships, and individuals engaged in the sale in commerce among and between the various States of the United States of products intended to be used for like and similar purposes, and who truthfully advertise their products.

CONCLUSION

The aforesaid representations, acts and practices of the respondent, as hereinbefore found, are to the prejudice and injury of respondent's aforesaid competitors and of the public, 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, testimony and other evidence taken before Miles J. Furnas, Robert S. Hall, and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Zo-Ro-Lo, Inc., its officers, representatives, agents, and employees directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medical preparation now designated "Zo-Ro-Lo," or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Representing that said preparation is a cure or remedy for arthritis, asthma, brain disease, Bright's disease, diabetes, acidity, epileptic convulsions, gall stones, inward goitre, rheumatism, neuritis, sciatica, or sinus, kidney, or prostate gland trouble.

2. Representing that said preparation neutralizes toxic poisons, relieves all pain, or has any therapeutic value in the treatment of ailments

which are due to intestinal auto-intoxication other than as a laxative or purgative.

3. Representing that said preparation is beneficial in starting one on the road to health, or in building up resistance to combat the cause of disease, or has any therapeutic value in the treatment of disease other than as a laxative or purgative.

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

IN THE MATTER OF

K & S SALES COMPANY AND MRS. FANNYE COHN

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

Docket 3497. Complaint, July 16, 1938—Decision, Aug. 12, 1939

Where an individual engaged in sale and distribution of premium certificates, coupons, or cards redeemable in chinaware, and in the chinaware with which the same were redeemed, to purchasers in various States and in the District of Columbia, in substantial competition, in commerce as aforesaid, with others engaged in sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and with those engaged in sale and distribution of the chinaware or other merchandise with which the sales-stimulator devices are redeemed, and including those who do not falsely represent that the chinaware or merchandise redeemed is procurable by merchants or their customers at cost sufficient merely to cover that of handling, packing, and shipping, and do not cause cost of transportation to be paid by recipient of such products after previously receiving amount sufficient to include same, and also including those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising terms and conditions for procuring their said products will be sent to those whose names appear upon mailing lists submitted by contracting merchants, and do not falsely represent to such merchants that sum or sums of money to be deposited upon delivery of such certificates, etc., constitute merely temporary deposit, to be returned to merchants as part of such plan:

In selling her said certificates, etc., through agents or salesmen whom she employed personally to solicit retail merchants, and who, acting in the scope of their employment and under her direction and supervision in offering and selling her certificates, etc., in connection with and as part of so-called sales-stimulator plan under which, as represented, merchant was to pay certain amount as deposit on receiving certificates, coupons or cards, to be issued to customers of the contracting merchant, and to be redeemed upon the purchase by the particular customer from the merchant of goods, wares, or merchandise of any kind or nature of a value of $5 or multiples thereof, upon being sent to said individual, through shipment to merchant or directly to customer by her of 10-piece set of chinaware, as more particularly below set forth—

(*a*) Represented that such certificates, coupons, or cards could be redeemed in chinaware or other merchandise, and at cost to customer of amount sufficient only to cover cost of packing, handling, and transportation, facts being contracting merchant or customer receiving sets was required to pay, in advance of shipment, sum of 89 cents as such purported cost of handling, packing, and transporting same, cost of transportation was required to be paid by merchant or customer to transporting carrier unless units of 100 or more sets were ordered in each shipment, merchant was not apprised of such requirement until such certificates had been presented for redemption, and majority of customers of merchants participating who procured

redemption certificates failed and refused to redeem same upon learning of said cost of 89 cents and additional cost of transporting said chinaware, actual cost of which to said individual was 65 cents per unit;

(*b*) Represented to contracting merchant that, in consideration of his adopting such sales-stimulator plan, there would be mailed to each person whose name might appear on a mailing list to be furnished by such merchant circulars, pamphlets, and other matter advertising to such potential customers terms and conditions upon which so-called "free" sets of chinaware might be secured, facts being she did not mail or cause to be mailed to such persons whose names appeared upon the list furnished her by contracting merchants any such circulars, pamphlets, or other advertising matter as above described;

(*c*) Represented, as aforesaid, that shipment would be made upon receipt of certificates, cards, or coupons representing sales of $5 at cost to customer of amount sufficient only to cover cost of packing, handling, and transportation, and thus exacted, in advance of shipment, sum of 89 cents as purported cost of handling, packing, and transporting said chinaware, facts being, as aforesaid noted, that 65 cents covered actual cost to her per unit;

(*d*) Represented to merchant that sales-promotion plan in question was conducted by her at no financial benefit, and that amount of $20, required of contracting merchant upon receipt of certificates, coupons, or cards issued by her for each 100 units, was a deposit which she undertook to return to merchant at rate of 20 cents per $5 certificate, as received and redeemed as hereinbefore described. and justified use of plan in question by representing that profit was expected to inure to her from subsequent orders of purchasers for necessary fill-in of the 10-piece sets procured through redemption of certificates, facts being majority of customers of merchants participating in plan in question, and who procured redemption certificates as before noted, failed and refused to redeem same upon learning of said cost of 89 cents and additional transportation cost, contracting merchant was thereby prevented from securing return in full of such purportedly temporary outlay of $20 per 100 certificates, and said individual was aware from previous experience that such redemption certificates would not be returned by purchasers from contracting merchants, and relied on such failure to return to keep from paying to said merchants said 20 cents per $5 certificate; and

(*e*) Represented to contracting merchant that adoption of such so-called sales-stimulator plan would greatly stimulate his general sales, facts being it did not have such result, but merely afforded a market for chinaware sold and distributed by her through the marketing of the initial sets and pieces necessary to fill in the same;

With effect of misleading and deceiving substantial number of retail merchants into mistaken and erroneous belief that, through use of such sales-stimulator plan, they could participate therein without cost, and that wide and general advertising for the benefit of such merchants would ensue, and the volume of their business would be greatly increased, and of misleading and deceiving them and their customers into mistaken and erroneous belief that said certificates, coupons, and cards would be redeemed by her by giving of free sets of chinaware, upon payment by said merchants or customers of amount sufficient only to cover cost of handling, packing, and transporting same, and with result, as direct consequence of such belief thus induced, that substantial number of merchants subscribed to said

so-called sales-stimulator plan, to their own financial loss and detriment, and substantial number of members of purchasing public bought goods and secured such certificates, and trade was thereby diverted unfairly to her from her competitors; to the injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Alden S. Bradley and *Mr. J. W. Brookfield, Jr.* for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that K & S Sales Co., a corporation, and Mrs. Fannye Cohn, an individual, respondents hereinafter referred to, 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 K & S Sales Co. is a corporation existing under the laws of the State of Illinois and having its principal office and place of business at 6227 North Broadway Avenue, Chicago, Ill. Respondent, Fannye Cohn, is an agent and employee of the respondent corporation, and maintains her principal office and place of business at 6227 North Broadway Avenue, Chicago, Ill. Respondent, K & S Sales Co., is engaged in the general retail merchandising business, and in its said merchandising employs various trade names, such as Universal Industries, Garden City Novelty Co., Montrose Silk Co., Lincoln Novelty Co., and others. Respondent, K & S Sales Co., acting by and through its officers, agents, and employees, is now, and has been for more than 2 years last past, engaged among other things in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of certain premium certificates, coupons, or cards redeemable in chinaware, and in chinaware with which the same were and are redeemed. This phase of respondents' merchandising is carried on largely under the name Universal Industries, and its policies and business operations at all times referred to have been, and now are, under the domination, management, and supervision of the respondent, Mrs. Fannye Cohn. The respondent corporation, in the manner aforesaid, causes the certificates, coupons, and cards, and the china-

ware with which the same are redeemable, to be shipped and transported from its place of business in Illinois to purchasers located in various States of the United States and in the District of Columbia, and so maintains a constant current of trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondent, K & S Sales Co., in the course and conduct of said business is now, and at all times referred to has been, in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and engaged in the sale and distribution of the chinaware or other merchandise with which the sale are redeemed.

PAR. 3. It has been and is the practice of the respondent corporation to employ agents or salesmen personally to solicit retail merchants. Such agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondents, while offering for sale and selling said certificates, coupons, and cards, and chinaware have represented, and now represent, to the prospective purchasers thereof in order to induce such purchaser to purchase the same, that:

A certain so-called sales-stimulator plan, necessitating the use of such certificates, coupons, and cards, which plan is hereafter described, is obtainable by the merchant participating in the same at no ultimate cost, by such merchant making a temporary deposit of $20 or multiples thereof, which is returnable to the merchant upon compliance with certain conditions. The plan, as represented, is the issuance of certificates, coupons, or cards, redeemable by respondent corporation, to customers of such contracting merchant who may purchase goods, wares or merchandise of any kind or nature of a value of $5 or multiples thereof. The contracting merchant is required, upon receipt of the certificates, coupons, or cards issued by the respondent corporation, to deposit with it the sum of $20 for each 100 units of the same. This sum the respondent corporation undertakes to return to the merchant at the rate of 20 cents per $5 certificate as the same are received and redeemed by it as aforesaid. When purchases in such amount have been made by the customer, the card indicating the total sum purchased to be $5 is surrendered to the contracting merchant and by him forwarded to the respondent corporation to be by it redeemed by shipping to the merchant for later delivery to the customer or by shipment to the customer direct a 10-piece set of chinaware, consisting of 2 pieces each of dinner plate, salad plate, butter plate, cup, and saucer. It is represented that this

shipment is made by the respondent corporation upon receipt of certificates, cards, or coupons, each representing sales of $5 at a cost to the customer of an amount sufficiently only to cover the cost of packing, handling, and transportation.

PAR. 4. Respondents represent to the merchant that this sales-promotion plan is conducted by respondent corporation at no financial benefit to it but justifies the use of such plan by representing that a profit is expected to inure to its benefit from subsequent orders of purchasers for the necessary fill-in of the 10-piece sets which it procures through the redemption of certificates as aforesaid. Respondents likewise represent to the contracting merchant that in consideration of such merchant adopting this sales-stimulator plan, there will be mailed to each person whose name may appear upon a mailing list to be furnished by such merchant, circulars, pamphlets, and other matter advertising to such potential customers the terms and conditions upon which the so-called "free" sets of chinaware may be secured. It is further represented to the contracting merchant that adoption of this plan will greatly stimulate the general sales of such merchant.

PAR. 5. In truth and in fact the contracting merchant or the customer receiving sets of chinaware is required to pay in advance of shipment the sum of 89 cents as a purported cost of handling, packing, and transporting the same. Upon receipt of said sum of 89 cents, respondent corporation ships the chinaware, but causes the cost of transportation to be paid by the merchant or customer to the carrier transporting the same, unless units of 100 or more sets are ordered in each shipment. Of this requirement the merchant is not apprised until certificates, coupons, or card are presented for redemption.

The chinaware so redeemed by the certificates, coupons, or cards, is secured by the respondent corporation at an actual cost of 65 cents per unit.

The respondent corporation does not mail, or cause to be mailed, to those persons whose names appear upon the list furnished it by contracting merchants, any circulars, pamphlets, or other matter advertising the terms and conditions upon which the so-called "free" chinaware may be procured.

The so-called sales-stimulator plan, as here outlined, does not stimulate sales of the contracting merchant, but merely affords a market for the chinaware sold and distributed by respondent corporation through the marketing of the initial sets and pieces necessary to fill in the same.

PAR. 6. The majority of those customers of merchants participating in said plan who procure redemption certificates fail and refuse

to redeem the same upon learning of the cost of 89 cents and the additional cost of transportation, thereby preventing the contracting merchant from securing a return in full of the purportedly temporary outlay of $20 per 100 certificates, cards, or coupons. Respondents are aware from previous experience that such redemption certificates will not be returned by purchasers from said contracting merchants and relies on such failure to return to keep from paying to such merchants the said 20 cents per $5 certificate.

PAR. 7. Among the competitors of the respondent corporation in interstate commerce are those who issue, or cause to be issued by merchants with whom they contract, certificates, coupons, and cards, redeemable in chinaware or other merchandise, but who do not falsely represent that the chinaware or merchandise so redeemed is procurable by merchants or customers of merchants at a cost sufficient merely to cover the cost of handling, packing, and shipping, and who do not cause the cost of transportation to be paid by the recipient of such chinaware or merchandise after previously receiving an amount sufficient to include the same. There are also among such competitors those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising the terms and conditions for the procurement of free chinaware or other merchandise will be sent to persons whose names appear upon mailing lists submitted to them by contracting merchants, and who do not falsely represent to such contracting merchants that a sum or sums of money to be by them deposited upon delivery of like certificates, coupons, and cards is a merely temporary deposit to be returned to such merchants as a part of said plan.

PAR. 8. The acts and practices of the respondents have had and now have a tendency and capacity to, and do, mislead and deceive a substantial number of retail merchants into the mistaken and erroneous belief that by use of such sales-stimulator plan such merchants can participate in said plan without cost, that wide and general advertising for the benefit of such merchants will ensue, and that the volume of business of such merchants will be greatly increased. Such acts and practices also have the capacity and tendency to, and do, mislead and deceive such merchants, and customers of such merchants, into the mistaken and erroneous belief that the certificates, coupons, and cards above described are to be redeemed by the respondent corporation by the giving of free sets of chinaware upon the payment by said merchants or customers of such merchants of an amount only sufficient to cover the cost of handling, packing, and transporting the same.

As a direct consequence of the mistaken and erroneous belief induced by the acts and practices of the respondents as aforesaid, a substantial number of merchants have subscribed to the so-called sales-stimulator plan of respondents to their own financial loss and detriment, and a substantial number of members of the purchasing public have purchased goods and secured said certificates, and the respondent corporation has diverted and now diverts trade to it from its competitors, to the injury of competition in commerce between and among the various States of the United States and the District of Columbia, and to the injury of the public.

PAR. 9. The acts, practices, and methods of respondents as hereinabove alleged are all to the prejudice of the public and the respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 16, 1938, issued and served its complaint in this proceeding upon respondents K & S Sales Co., a corporation, and Mrs. Fannye Cohn, 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 said respondents' answer, the Commission by order entered herein, granted the motion of respondent, Mrs. Fannye Cohn, for permission to withdraw her said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, 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 of the said Mrs. Fannye Cohn, and on testimony with respect to the dissolution of respondent K & S Sales Co., 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, Mrs. Fannye Cohn, maintains her principal place of business at 6227 No. Broadway Ave., Chicago, Ill. Respondent has been and is engaged in the sale and distribution in commerce among and between the various States of the United States

and in the District of Columbia of certain premium certificates, coupons, or cards redeemable in chinaware and in the chinaware with which the same were redeemed. Respondent caused such certificates, coupons, and cards and the chinaware with which the same are redeemable to be shipped and transported from her place of business in the State of Illinois to purchasers located in various States of the United States other than Illinois, and in the District of Columbia, and so maintains a course of trade in said products in commerce between and among the various States and the District of Columbia.

PAR. 2. Respondent, Mrs. Fannye Cohn, in the course and conduct of said business is now and at all times referred to has been, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other individuals and with corporations and partnerships also engaged in the sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and engaged in the sale and distribution of the chinaware or other merchandise with which the sales stimulator devices are redeemed.

PAR. 3. It has been and is the practice of the respondent, Mrs. Fannye Cohn, to employ agents or salesmen personally to solicit retail merchants. Such agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondent, while offering for sale and selling said certificates, coupons, and cards, and chinaware have represented, and now represent, to the prospective purchasers thereof in order to induce such purchasers to purchase the same, that:

A certain so-called sales-stimulator plan, necessitating the use of such certificates, coupons, and cards, which plan is hereafter described, is obtainable by the merchant participating in the same at no ultimate cost, by such merchant making a temporary deposit of $20 or multiples thereof, which is returnable to the merchant upon compliance with certain conditions. The plan, as represented, is the issuance of certificates, coupons, or cards, redeemable by respondent, to customers of such contracting merchant who may purchase goods, wares, or merchandise of any kind or nature of a value of $5 or multiples thereof. The contracting merchant is required, upon receipt of the certificates, coupons, or cards issued by the respondent, to deposit with her the sum of $20 for each 100 units of the same. This sum the respondent undertakes to return to the merchant at the rate of 20 cents per $5 certificate as the same are received and redeemed by her as aforesaid. When purchases in such amount have been made by the customer, the card indicating the total sum purchased to be $5 is surrendered to the

contracting merchant and by him forwarded to the respondent to be by her redeemed by shipping to the merchant for later delivery to the customer or by shipment to the customer direct a 10-piece set of chinaware, consisting of 2 pieces each of dinner plate, salad plate, butter plate, cup, and saucer. It is represented that this shipment is made by the respondent upon receipt of certificates, cards, or coupons, each representing sales of $5 at a cost to the customer of an amount sufficient only to cover the cost of packing, handling, and transportation.

PAR. 4. Respondent, Mrs. Fannye Cohn, represents to the merchant that this sales-promotion plan is conducted by respondent at no financial benefit to her but justifies the use of such plan by representing that a profit is expected to inure to her benefit from subsequent orders of purchasers for the necessary fill-in of the 10-piece sets which she procures through the redemption of certificates as aforesaid. Respondent likewise represents to the contracting merchant that in consideration of such merchant adopting this sales-stimulator plan, there will be mailed to each person whose name may appear upon a mailing list to be furnished by such merchant, circulars, pamphlets, and other matter advertising to such potential customers the terms and conditions upon which the so-called "free" sets of chinaware may be secured. It is further represented to the contracting merchant that adoption of this plan will greatly stimulate the general sales of such merchant.

PAR. 5. In truth and in fact the contracting merchant or the customer receiving sets of chinaware is required to pay in advance of shipment the sum of 89 cents as a purported cost of handling, packing, and transporting the same. Upon receipt of said sum of 89 cents, respondent ships the chinaware, but causes the cost of transportation to be paid by the merchant or customer to the carrier transporting the same, unless units of 100 or more sets are ordered in each shipment. Of this requirement the merchant is not apprised until certificates, coupons, or cards are presented for redemption.

The chinaware so redeemed by the certificates, coupons, or cards, is secured by the respondent at an actual cost of 65 cents per unit.

The respondent does not mail, or cause to be mailed, to those persons whose names appear upon the list furnished her by contracting merchants, any circulars, pamphlets, or other matter advertising the terms and conditions upon which the so-called "free" chinaware may be procured.

The so-called sales-stimulator plan, as here outlined, does not stimulate sales of the contracting merchant, but merely affords a market for the chinaware sold and distributed by respondent through the marketing of the initial sets and pieces necessary to fill in the same.

PAR. 6. The majority of those customers of merchants participating in said plan who procure redemption certificates fail and refuse to redeem the same upon learning of the cost of 89 cents and the additional cost of transportation, thereby preventing the contracting merchant from securing a return in full of the purportedly temporary outlay of $20 per 100 certificates, cards or coupons. Respondent is aware from previous experience that such redemption certificates will not be returned by purchasers from said contracting merchants and relies on such failure to return to keep from paying to such merchants the said 20 cents per $5 certificate.

PAR. 7. Among the competitors of the respondent in interstate commerce are those who issue, or cause to be isued by merchants with whom they contract, certificates, coupons, and cards, redeemable in chinaware or other merchandise, but who do not falsely represent that the chinaware or merchandise so redeemed is procurable by merchants or customers of merchants at a cost sufficient merely to cover the cost of handling, packing, and shipping, and who do not cause the cost of transportation to be paid by the recipient of such chinaware or merchandise after previously receiving an amount sufficient to include the same. There are also among such competitors those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising the terms and conditions for the procurement of free chinaware or other merchandise will be sent to persons whose names appear upon mailing lists submitted to them by contracting merchants, and who do not falsely represent to such contracting merchants that a sum or sums of money to be by them deposited upon delivery of like certificates, coupons, and cards is a merely temporary deposit to be returned to such merchants as a part of said plan.

PAR. 8. The acts and practices of the respondent, Mrs. Fannye Cohn, have had and now have a tendency and capacity to, and do, mislead and deceive a substantial number of retail merchants into the mistaken and erroneous belief that by use of such sales-stimulator plan such merchants can participate in said plan without cost, that wide and general advertising for the benefit of such merchants will ensue, and that the volume of business of such merchants will be greatly increased. Such acts and practices also have the capacity and tendency to, and do, mislead and deceive such merchants, and customers of such merchants, into the mistaken and erroneous belief that the certificates, coupons, and cards above described are to be redeemed by the respondent by giving of free sets of chinaware upon the payment of said merchants or customers of such merchants .

of an amount only sufficient to cover the cost of handling, packing, and transporting the same.

As a direct consequence of the mistaken and erroneous belief induced by the acts and practices of the respondent as aforesaid, a substantial number of merchants have subscribed to the so-called sales-stimulator plan of respondent to their own financial loss and detriment, and a substantial number of members of the purchasing public have purchased goods and secured said certificates, and trade has thereby been diverted unfairly to the respondent from her competitors to the injury of competition in commerce between and among the various States of the United States and in the District of Columbia, and to the injury of the public.

PAR. 9. The respondent, K & S Sales Co., a corporation, was formally dissolved on January 23, 1939.

CONCLUSION

The aforesaid acts and practices of the respondent, Mrs. Fannye Cohn, as herein set forth, 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 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 upon testimony with respect to the dissolution of the corporate respondent K & S Sales Co., and upon the answer of the individual respondent Mrs. Fannye Cohn, in which answer said respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, 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, Mrs. Fannye Cohn, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of any sales-stimulator plan, including certificates, coupons, and cards, redeemable in chinaware or other merchandise, do forthwith cease and desist from:

1. Representing that certificates, coupons, or cards can be redeemed in chinaware or other merchandise, unless and until all of

the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the prices to be paid in connection with obtaining such chinaware or other merchandise.

2. Representing that respondent supplies to her customers or to other persons circulars, pamphlets, or other advertising matter relating to said sales-stimulator plan when such is not the fact.

3. Misrepresenting that any specified sum is the actual cost to respondent of said chinaware or other merchandise or is the actual cost of packing, handling, and distributing said products, or misrepresenting in any other manner the actual cost to respondent of said products or the actual cost of packing, handling, and distributing said products.

4. Representing that payment made by respondent's customers for said sales-stimulator plan, or any part thereof, is a temporary deposit which will be refunded, or that any other payments made by said customers in connection with said plan will be refunded, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed in connection with the obtaining of such refund or refunds.

5. Representing that the general sales of respondent's customers will be increased by reason of their use of respondent's sales-stimulator plan.

It is further ordered, That the respondent shall, within 60 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.

It is further ordered, That this case be, and the same hereby is, closed as to the corporate respondent K & S Sales Co., without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with the Commission's regular procedure.

IN THE MATTER OF

LEON E. VAN LAETHEM, TRADING AS VAN 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 3743. Complaint, Mar. 21, 1939—Decision, Aug. 12, 1939

Where an individual engaged in compounding, selling, and distributing, under name of "No-No Germ Control," medical or pharmaceutical preparation to members of purchasing public in various States; in advertisements which he disseminated through the mails and newspapers and periodicals of general circulation, and through circulars and other printed matter distributed in commerce among the various States, and through various means, and which were intended and calculated to induce purchase of his said product in commerce—

(*a*) Represented that his said preparation would kill all the germs in the body, and constituted an absolute germicide and absolute contraceptive, and preparation which was odorless and nonirritating to the organs involved, and that users thereof need have no fear as to its effectiveness, and that its vapors penetrated hidden recesses of the body and killed germs where other products composed of powder and liquid would not reach; and

(*b*) Represented that it was an effective remedy for and would give quick relief from head colds and hay fever, and would clear the nasal passages, reduce swollen membranes, and clear away mucous, and would remove bunions and callouses from the feet and do away with the pain caused thereby;

Facts being statements, representations, and implications used and disseminated by him as above set forth were grossly exaggerated, misleading, and untrue, and constituted false advertisements, it was not an absolute germicide and would not kill all germs in the body or accomplish other results claimed therefor as above set forth, was not odorless, and was irritating to organs concerned, users thereof had no assurance that it would be effective, its vapors did not penetrate as aforesaid and kill germs not reached by powder and liquid preparations, and it was not effective in treatment of head colds and hay fever, would not operate as set forth in such cases, nor in connection with removal of bunions and callouses, nor relieve pain caused thereby, and constituted nothing more than a formaldehyde solution, with very distinctive odor and effective as antiseptic rather than as germicide, and inhalation of which irritated mucous membranes of nose and was likely to cause bronchitis or other catarrhal conditions, and his said claims as to therapeutic value or efficacy of said product greatly exceeded any claims with respect thereto which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that his said product possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said product:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leon E. Van Laethem, an individual, trading as Van Products Co., hereinafter referred to as respondent, has violated the provisions of the 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 respondent, Leon E. Van Laethem, is an individual trading as Van Products Co., with his office and place of business in the city of New Milford, State of New Jersey.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation under the name "No-No Germ Control." Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes the said preparation, when sold by him, to be transported from his aforesaid place of business in the State of New Jersey to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation 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 the aforesaid business the respondent has disseminated and is now disseminating, and has and does now cause to be disseminated, false advertisements for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of respondent's said medical preparation. Said false advertisements were and are disseminated by use of the United States mails and by insertion in newspapers, in periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States. Various means have been and are used by respondent to disseminate or cause the dissemination of said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce

among and between the various States of the United States of respondent's said medical preparation. Among, and typical of, the statements and representations so used and disseminated as aforesaid are the following:

Odorless Feminine Hygiene Germ Control.

Absolute germicide

No uncertainty

Non-irritating

No-No Vapors will kill all the germs

No-No Vapors kill the germs, as they reach where powder and liquid do not reach.

No-No Vapors Go Effectively to the Very Seat of Head Colds.

Safety first with No-No Germ Control used as syringe; it may cost a lot of money and suffering to forget it.

Sure, quick relief—hay fever, head colds.

For bunions and callouses. Pain will disappear. Enables you to wear your shoes with comfort.

No-No Vapors as an absolute germicide clear the nasal passages, penetrate deeply, reduce swollen membranes, clear away clogging mucous, lessen watery discharges from nose and eyes.

On some of the false advertisements used and disseminated as aforesaid the respondent uses, under the words "No-No Germ Control," a picturization showing the arrival of the stork carrying a bundle, and a woman with her hands upraised, warding off or frightening away the stork, saying "No; No."

PAR. 4. Through the use of the statements, representations, and implications hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in use, respondent has represented that his product will kill all the germs in the human body; that it is an absolute germicide; that it is an absolute contraceptive and preventive of pregnancy; that it is odorless, nonirritating to the genital organs, and the users thereof need have no fear as to its effectiveness; that its vapors penetrate the hidden recesses of the body and kill germs therein where other preparations composed of powder and liquid will not reach; that it is an effective remedy for, and will give quick relief in, head colds and hay fever, and will clear the nasal passages, reduce swollen membranes, and clear away mucous; and that its use will remove bunions and callouses from the feet and do away with the pain caused thereby.

PAR. 5. The aforesaid statements, representations, and implications used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertisements. In truth and in fact, respondent's product is not an absolute germicide, and it will not kill all the germs in the human

body; it is not a contraceptive and will not prevent pregnancy; it is not odorless and is irritating to the genital organs, and the users thereof have no assurance it will be effective; its vapors do not penetrate hidden recesses of the body and kill germs not reached by preparations in powder and liquid form; it is not effective in the treatment of head colds and hay fever, and does not clear the nasal passages or reduce swollen membranes and clear away mucous; it will not remove bunions and callouses from the feet and relieve the pain caused thereby.

The preparation of respondent is nothing more than a formaldehyde solution. It has a very distinctive odor and is effective as an antiseptic, rather than as a germicide. Inhalation of said product causes irritation to the mucous membranes of the nose and is likely to cause bronchitis or other catarrhal conditions.

Respondent's claims of therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 21, 1939, issued, and on March 22, 1939, served, its complaint in this proceeding upon respondent, Leon E. Van Laethem, an individual, trading as Van Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 12, 1939, respondent filed his answer, in which answer

he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and 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. The respondent, Leon E. Van Laethem, is an individual trading as Van Products Co., with his office and place of business in the city of New Milford, State of New Jersey.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation under the name "No-No Germ Control." Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes the said preparation, when sold by him, to be transported from his aforesaid place of business in the State of New Jersey to the purchasers thereof at the respective points of location in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said preparation, 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 the aforesaid business the respondent has disseminated and is now disseminating, and has and does now cause to be disseminated, false advertisements for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of respondent's said medical preparation. Said false advertisements were and are disseminated by use of the United States mails and by insertion in newspapers, in periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States. Various means have been and are used by respondent to disseminate or cause the dissemination of said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondent's said medical preparation. Among, and typical of, the

statements and representations so used and disseminated as aforesaid are the following:

Odorless Feminine Hygiene Germ Control.

Absolute germicide.

No uncertainty.

Non-irritating.

No-No Vapors will kill all the germs.

No-No Vapors kill the germs, as they reach where powder and liquid do not reach.

No-No Vapors Go Effectively to the Very Seat of Head Colds.

Safety first with No-No Germ Control used as syringe; it may cost a lot of money and suffering to forget it.

Sure, quick relief—hay fever, head colds.

For bunions and callouses. Pain will disappear. Enables you to wear your shoes with comfort.

No-No Vapors as an absolute germicide clear the nasal passages, penetrate deeply, reduce swollen membranes, clear away clogging mucous, lessen watery discharges from nose and eyes.

On some of the false advertisements used and disseminated as aforesaid the respondent uses, under the words "No-No Germ Control," a picturization showing the arrival of the stork carrying a bundle, and a woman with her hands upraised, warding off or frightening away the stork, saying "No; No."

PAR. 4. Through the use of the statements, representations, and implications hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in use, respondent has represented that his product will kill all the germs in the human body; that it is an absolute germicide; that it is an absolute contraceptive and preventive of pregnancy; that it is ordorless, nonirritating to the genital organs, and the users thereof need have no fear as to its effectiveness; that its vapors penetrate the hidden recesses of the body and kill germs therein where other preparations composed of powder and liquid will not reach; that it is an effective remedy for, and will give quick relief in, head colds and hay fever, and will clear the nasal passages, reduce swollen membranes, and clear away mucous; and that its use will remove bunions and callouses from the feet and do away with the pain caused thereby.

PAR. 5. The aforesaid statements, representations, and implications used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertisements. In truth and in fact, respondent's product is not an absolute germicide and it will not kill all the germs in the human body; it is not a contraceptive and will not prevent

pregnancy; it is not odorless and is irritating to the genital organs, and the users thereof have no assurance it will be effective; its vapors do not penetrate hidden recesses of the body and kill germs not reached by preparations in powder and liquid form; it is not effective in the treatment of head colds and hay fever, and does not clear the nasal passages or reduce swollen membranes and clear away mucous; it will not remove bunions and callouses from the feet and relieve the pain caused thereby.

The preparation of respondent is nothing more than a formaldehyde solution. It has a very distinctive odor and is effective as an antiseptic, rather than as a germicide. Inhalation of said product causes irritation to the mucous membranes of the nose and is likely to cause bronchitis or other catarrhal conditions.

Respondent's claims of therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to said preparation has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent, Leon E. Van Laethem, an individual, trading as Van Products Co., are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts,

and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Leon E. Van Laethem, individually, and trading as Van Products Co., his representatives, agents, and employees directly, or through any corporate or other device, do forthwith cease and desist from—

Disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation containing drugs now designated by the name of "No-No Germ Control," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation which advertisements represent directly or through implication that said medicinal preparation will kill germs which cannot be reached by powder or liquid preparations, or will kill all germs, or is a germicide; that said preparation will prevent pregnancy or is a competent and effective contraceptive; that said preparation is nonirritating to the genital organs and odorless; that said preparation will clear the nasal passages or reduce swollen membranes or clear away mucous, or is an effective treatment for head colds or hay fever; that said preparation will remove callouses or bunions or relieve pains caused thereby; or which advertisements fail to reveal that said preparation is not a wholly safe drug to be used by the lay public in self-medication.

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

IN THE MATTER OF

THE MODE NOVELTY COMPANY, WOLF ALBOUM, AND SAMUEL WEISMAN

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

Docket 3473. Complaint, July 8, 1938—Decision, Aug. 14, 1939

Where a corporation and two individuals, who were general officers thereof and managed, dominated, and controlled its business affairs and activity, and particularly with respect to acts and practices herein involved, engaged in manufacture, sale, and distribution of novelty hats and caps made from new and from second-hand or used materials, including second-hand, old, and used felt hats which they steamed, cleaned, and shaped into novelty caps or hats and sold to jobbers and wholesalers for resale to retailers and general purchasing public—

Sold said old, used and second-hand caps and hats, after being made over into products with new trimmings and with appearance of new articles made from felts which had never been worn, with no label or marking to indicate that they were in fact made from second-hand materials which had been renovated and made over by them as aforesaid, to jobbers and wholesalers by whom said caps and hats were in turn resold to retailers, who resold same to purchasing public without disclosing fact that they had been made from felts previously worn and then renovated, and from other used materials, and under circumstances such as to indicate they were new;

With result that they were enabled, by reason of much lower cost of obtaining and making over such old and used materials than cost of making new articles of similar type, to sell said products to jobbers and wholesalers at substantially lower prices than were manufacturers of new articles of similar type able to sell to jobbers and wholesalers and, through them, to retailers and to purchasing public, and with tendency and capacity to induce many wholesale and retail dealers and many of purchasing public to buy such caps and hats, made as aforesaid, in the mistaken and erroneous belief that they were buying new and unused materials, and with result, as direct consequence of mistaken and erroneous beliefs induced by said practices, that number of consuming public bought substantial volume of their said products and trade was diverted unfairly to them from those likewise engaged in selling and manufacturing caps and hats and who do not misrepresent the quality and type of the material out of which their products are made; to the substantial injury of competition in commerce;

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. George Foulkes and *Mr. Robert Mathis, Jr.* for the Commission.

Mr. Jacob Lipman, of Newark, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Mode Novelty Co., a corporation, and Wolf Alboum, as president and treasurer of The Mode Novelty Co., and individually, and Samuel Weisman as vice president and secretary of The Mode Novelty Co., and individually, hereinafter referred to as respondents, have violated the provisions of the 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 Mode Novelty Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its office and principal place of business at 242-13 Avenue, Newark, N. J. Respondent Wolf Alboum, also of Newark, N. J., is president and treasurer of respondent The Mode Novelty Co., and respondent Samuel Weisman with offices at 242-13 Avenue, Newark, N. J., is vice president and secretary of respondent company.

The said respondents, Wolf Alboum and Samuel Weisman, individually and as officers of the aforesaid corporate respondent, manage, dominate, and control its affairs and activities as hereinafter set out, and have used and now use said corporation, The Mode Novelty Co., as an instrumentality and agency to accomplish such things as said Wolf Alboum and Samuel Weisman propose and plan.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof, respondents for some time last past have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause, and for some time last past have caused such caps and hats to be transported from their place of business in Newark to the aforesaid purchasers thereof located in various 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 partnerships engaged in the business of manufacturing and selling new caps and hats or caps and hats similar to those sold by respondents 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 their business respondents buy second-hand, old, and used felt hats. The second-hand, old, and used felt hats are cleaned, steamed, ironed and shaped by respondents into caps or hats, fitted with new trimmings, such as sweat bands and size labels, and in some cases with peaks and vizors and sold by respondents to retailers who resell the same to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who in turn resell said products to the purchasing public.

PAR. 4. The aforesaid old, used and second-hand hats and caps, after having been made over by respondents into caps and hats with new trimmings, as described in paragraph 3 hereof, have the appearance of new caps and hats manufactured from felts which have never been worn, and said caps and hats are sold by respondents to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said caps or hats to indicate that said caps and hats are in fact manufactured from second-hand materials, which have been renovated and made over by respondents. Said caps and hats sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated and made over, and other used materials, and under such circumstances as to indicate that they are new caps and hats.

The cost to respondents of obtaining, renovating, and making over said old and previously used hats into caps and hats as aforesaid is much less than the cost to manufacturers of manufacturing new caps and hats of similar quality, and respondents are thereby able to sell said caps and hats to retailers, jobbers, and wholesalers, and through them to the purchasing public at substantially lower prices than manufacturers of new caps and hats can sell caps and hats of the same or similar quality to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 5. The acts and practices of respondents as hereinabove set forth had, and now have, a tendency and capacity to induce many wholesale and retail dealers and many of the purchasing public to purchase said caps and hats manufactured from old and used hats, which have been renovated and made over by respondents, in the mistaken belief that they are purchasing new and unused hats and caps manufactured from new and unused materials. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the practices aforesaid, a number of the consuming public purchased a substantial volume of respondents' caps and hats with the

result that trade has been unfairly diverted to respondents from individuals, partnerships and corporations likewise engaged in the business of selling and manufacturing caps and hats who do not misrepresent the quality and type of material out of which their hats and caps are made. As a result 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. 6. The above and foregoing acts and practices and representations of 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 in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 8, A. D., 1938, issued, and thereafter served, its complaint in this proceeding upon the respondents, The Mode Novelty Co., a corporation, and Wolf Alboum and Samuel Weisman as its president and vice president, respectively, and individually, 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 the 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 Jacob Lipman, attorney for the respondents, before A. F. Thomas, an examiner of the Commission duly designated to take testimony and receive evidence in said proceeding, 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 said complaint, the answers thereto, testimony and other evidence, and brief of attorney for the Commission; and the Commission, having duly considered the same and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Mode Novelty Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located

in Newark, N. J. Respondents Wolf Alboum and Samuel Weisman are, respectively, the president and the vice president and secretary of said corporation. The individual respondents, Wolf Alboum and Samuel Weisman, manage, dominate, and control the business affairs and activities of the corporate respondent, particularly with respect to the acts and practices herein described. Respondents are engaged in the manufacture, sale, and distribution of novelty hats and caps made from new and second-hand, or used, materials, and have caused said merchandise, when sold, to be transported from their principal place of business in Newark, N. J. to purchasers thereof in New Jersey and in other States of the United States at their respective points of location. In the course and conduct of its business, respondent The Mode Novelty Co. has been and now is in substantial competition with other corporations and with firms and individuals engaged in the manufacture, sale, and distribution of like or 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 their business, respondents buy second-hand, old, and used felt hats which they steam, clean and shape into novelty caps or hats, and which are then sold by respondents to jobbers and wholesale dealers who, in turn, sell them to retailers and to the general purchasing public.

PAR. 3. The aforesaid old, used and second-hand caps and hats, after being made over by the respondents into caps and hats with new trimmings, have the appearance of new caps and hats made from felts which have never been worn, and said caps and hats are sold by the respondents to jobbers and wholesalers without any label or marking to indicate that said caps and hats are, in fact, manufactured from second-hand materials which have been renovated and made over by respondents. Said caps and hats, so sold to jobbers and wholesale dealers, are by them, in turn, sold to retailers who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated, and from other used materials, and under such circumstances as to indicate that they are new caps and hats.

The cost to respondents of obtaining and making over said old and used materials is much less than the cost to manufacturers of manufacturing new caps and hats of a similar type, thereby enabling respondents to sell said caps and hats to jobbers and wholesalers at substantially lower prices than the prices at which manufacturers of new caps and hats can sell hats and caps of similar type to jobbers and wholesalers, and through said dealers, and retailers, to the purchasing public.

PAR. 4. The Commission finds that the acts and practices of respondent as hereinabove set forth had, and now have, the tendency and capacity to induce many wholesale and retail dealers and many of the purchasing public to purchase said caps and hats manufactured from old and used hats and caps which have been renovated and made over by respondents, in the mistaken and erroneous belief that they are purchasing new and unused hats and caps manufactured from new and unused materials. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the practices aforesaid, a number of the consuming public have purchased a substantial volume of respondents' caps and hats, with the result that trade has been unfairly diverted to respondents from individuals, partnerships, and corporations likewise engaged in the business of selling and manufacturing caps and hats, and who do not misrepresent the quality and type of the material out of which their hats and caps are made. As a result thereof, substantial injury has been and is now 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. 5. In the course and conduct of their business, on September 10, 1938, Samuel Weisman and William Alboum, trading as The Mode Novelty Co. entered into a stipulation as to the facts and an agreement to cease and desist, with the Federal Trade Commission, by the terms of which agreement said respondents, Weisman and Alboum, agreed to cease and desist from selling or offering for sale in interstate commerce baseball or novelty caps made from second-hand, old, worn, or discarded felt or other material, unless and until there is stamped upon, or affixed or attached to, said products, in a conspicuous place, some word or words clearly indicating that the said products are not made from new and unused materials, but are from old, worn, second-hand, or discarded materials.

PAR. 6. The Commission further finds that subsequent to the date of the execution of said stipulation and agreement, the respondents did sell and distribute in commerce among and between the various States of the United States and in the District of Columbia certain baseball or novelty caps which were made from second-hand, old, worn and discarded materials, and upon which there was not stamped, affixed, or attached any word or words clearly indicating that the said caps were made from second-hand, old, worn, and discarded materials.

CONCLUSION

The aforesaid acts and practices of the respondents, as set forth in the aforesaid findings of facts, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, in violation 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 respondents, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondents not having filed brief, and 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 the Federal Trade Commission Act.

It is ordered, That respondent, The Mode Novelty Co., a corporation, its officers, representatives, agents, and employees, and respondents Wolf Alboum and Samuel Weisman, individually and as officers of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats and caps in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats or caps composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats or caps then such stamping must appear on the bodies of such hats or caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats or caps made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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.

IN THE MATTER OF

SAMUEL RAVID, INDIVIDUALLY, AND TRADING AS OHIO 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 3594. Complaint, Sept. 17, 1938—Decision, Aug. 14, 1939

Where an individual engaged in sale and distribution of dresser sets, cigarette cases and lighters, table and kitchen ware, pen and pencil sets, dolls, watches, and numerous other articles of merchandise, to purchasers in various other States and in the District of Columbia—

Sold and distributed said articles by means of a game of chance, gift enterprise, or lottery scheme under which he distributed to representatives and prospective representatives certain advertising literature including a sales circular listing number of items of merchandise and prices thereof, and including pull card for use in sale and distribution of products in question under a plan in accordance with which particular item of merchandise secured and price paid therefor, and purported and represented retail value secured, were determined by chance in accordance with item and price disclosed by separation of particular tab selected from said card, and person operating card was compensated after sale of all tabs or chances and remission of amounts thus secured, by premium; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar sales plans varying therefrom in detail only, and under which members of purchasing public were induced by apparent greater values and regular prices of some of said articles of merchandise as compared to price prospective purchaser would be required to pay in event of securing one of said articles, to purchase tabs or chances in hope of receiving article of merchandise of far greater value than designated price to be paid therefor, and under which fact as to whether purchaser of one of said tabs received article of greater value and higher regular price than price designated therefor on such tab, and which of said articles purchaser was to receive, and amount of money which purchaser was to pay, was determined wholly by lot or chance, and there was involved game of chance or sale of a chance to procure an article of merchandise at price much less than apparent normal retail price thereof; contrary to the established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said method or any method involving game of chance or sale of a chance to win something by chance, or any method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said method and by element of chances involved in sale of said merchandise as above described, and were thereby induced to buy and sell his said products in preference to merchandise offered and sold by his said competitors who do not use such or equivalent method, and with effect, through use of said method and because of said game of chance, of unfairly diverting trade and custom to him from his competitors aforesaid who do not use said or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. D. C. Daniel for the Commission.
Harris, Sacks & Subrin, of Akron, Ohio, for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel Ravid, individually and trading as Ohio Novelty Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Samuel Ravid, is an individual trading under the name of Ohio Novelty Co., with his principal office and place of business located at 107 Westmoreland Terrace, Akron, Ohio. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, cigarette cases and lighters, tableware, kitchen ware, pen and pencil sets, dolls, clocks, watches, blankets, bedspreads, tablecloths, wearing apparel, cosmetics, jewelry, razors, razor blades, thermometers, electric lamps, suitcases, cameras, beauty sets, billfolds, tool sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his aforesaid place of business in the State of Ohio to purchasers thereof located in the various other States of the United States and 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 by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 sells and distributes and has sold and distributed said articles of merchandise by means of a game of

chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of mechandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has fur-

nished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 the apparent 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 method which 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 of such merchandise 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 any equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency 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. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 17, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Samuel

Ravid, individually and trading as Ohio Novelty Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, Samuel Ravid, is an individual trading under the name of Ohio Novelty Co., with his principal office and place of business located at 107 Westmoreland Terrace, Akron, Ohio. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, cigarette cases and lighters, tableware, kitchen ware, pen and pencil sets, dolls, clocks, watches, blankets, bedspreads, tablecloths, wearing apparel, cosmetics, jewelry, razors, razor blades, thermometers, electric lamps, suitcases, cameras, beauty sets, billfolds, tool sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his aforesaid place of business in the State of Ohio to purchasers thereof located in the various other States of the United States and 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 by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 sells and distributes and has sold and

distributed said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent 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 method which 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 of such merchandise 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 any equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency 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, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Samuel Ravid, individually and trading as Ohio Novelty Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of dresser sets, cigarette cases and lighters, tableware, kitchen ware, pen and pencil sets, dolls, clocks, watches, blankets, bedspreads, tablecloths, wearing apparel, cosmetics, jewelry, razors, razor blades, thermometers, electric lamps, suitcases, cameras, beauty sets, billfolds, tool sets, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon, or any other lottery devices, so as to enable such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or distributors, or to members of the public, pull cards or circulars having pull tabs thereon, or any other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device or devices.

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

McDOWELL, PYLE & 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 3832. Complaint, June 22, 1939—Decision, Aug. 14, 1939

Where a corporation engaged in sale and distribution of peanuts and confectionery products, including certain assortments of peanuts which were so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof, and which were composed of (1) thirty-six ½-pound tins of peanuts and twelve 1-pound tins, together with punchboard for sale and distribution of said peanuts under a plan and in accordance with said board's explanatory legend pursuant to which purchasers securing certain numbers from board received for 2 cents paid 1 of said half-pound or pound tins, value of which was in excess of said amount, and purchasers of last punches in each of 16 sections in which board was divided received half-pound tin, and purchaser who did not qualify by obtaining 1 of lucky numbers or by punching last number in 1 of sections received nothing for his money other than privilege of punching number from board, and of (2) various other assortments of peanuts, together with punchboards involving lot or chance feature and similar to that hereinbefore described and varying therefrom in detail only—

Sold to retailers or purchasers such assortments along with said punchboards for their use in selling and distributing its said peanuts in accordance with aforesaid sales plan, 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 as above set forth, involving game of chance or sale of a chance to procure tins of peanuts at price much less than normal retail price thereof, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with 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;

With result that many persons were attracted by said sales plan or method employed by it in sale and distribution of its peanuts and by element of chance involved therein, and were thereby induced to buy its said products in preference to peanuts offered and sold by said competitors who do not use same or equivalent method, and with effect, by reason of said game of chance, of diverting trade in commerce unfairly to it from its competitors aforesaid, to the substantial injury of competition in commerce:

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. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that McDowell, Pyle & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, McDowell, Pyle & Co., Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at 221 West Pratt Street, Baltimore, Md. Respondent is now, and for some time last past has been engaged in the sale and distribution of peanuts and confectionery products in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from its aforesaid place of business in Baltimore, Md., to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or 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, respondent sells, and has sold, to retail dealers certain assortments of tins of peanuts so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of thirty-six ½-pound tins of peanuts and twelve 1-pound tins of peanuts, together with a device commonly called a punchboard. Said tins of peanuts are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 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 the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a ½-pound or 1-pound tin of peanuts. The punches on the board are arranged in 16 sections, and the purchaser of the last punch in each section receives a ½-pound tin of peanuts. A purchaser who does not qualify by obtaining 1 of the lucky numbers, or by punching the last number in 1 of the sections, receives nothing for his money other than the privilege of punching a number from the board. The tins of peanuts are worth more than 2 cents each, and the purchaser who obtains 1 of the numbers calling for 1 of the tins of peanuts receives the same for the price of 2 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 tins of peanuts are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of peanuts along with punchboards, involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. The dealers or purchasers to whom respondent furnishes said punchboards use the same in selling and distributing respondent's said peanuts 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. The use by respondent of said method in the sale of its peanuts and the sale of said peanuts by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of peanuts to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure tins of peanuts at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute peanuts 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 said sales plan or method employed by respondent in the sale and distribution of its peanuts and the element of chance involved there-

in, and are thereby induced to buy and sell respondent's peanuts in preference to peanuts 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 22, 1939, issued and thereafter served its complaint in this proceeding upon respondent McDowell, Pyle & Co., Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 therefore an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and 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, McDowell, Pyle & Co., is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at 221

West Pratt Street, Baltimore, Md. Respondent is now, and for some time last past has been, engaged in the sale and distribution of peanuts and confectionery products in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from its aforesaid place of business in Baltimore, Md., to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or 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, respondent sells, and has sold, to retail dealers certain assortments of tins of peanuts so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of thirty-six ½-pound tins of peanuts and twelve 1-pound tins of peanuts, together with a device commonly called a punchboard. Said tins of peanuts are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 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 the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a ½-pound or 1-pound tin of peanuts. The punches on the board are arranged in 16 sections, and the purchaser of the last punch in each section receives a ½-pound tin of peanuts. A purchaser who does not qualify by obtaining 1 of the lucky numbers, or by punching the last number in 1 of the sections, receives nothing for his money other than the privilege of punching a number from the board. The tins of peanuts are worth more than 2 cents each, and the purchaser who obtains 1 of the numbers calling for 1 of the tins of peanuts receives the same for the price of 2 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 tins of peanuts are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of peanuts along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. The dealers or purchasers to whom respondent furnishes said punchboards use the same in selling and distributing respondent's said peanuts 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. The use by respondent of said method in the sale of its peanuts and the sale of said peanuts by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of peanuts to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure tins of peanuts at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute peanuts 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 said sales plan or method employed by respondent in the sale and distribution of its peanuts and the element of chance involved therein, and are thereby induced to buy and sell respondent's peanuts in perference to peanuts 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being, and has been, 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 respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts 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, McDowell, Pyle & Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of peanuts or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing peanuts or any other merchandise so packed and assembled that sales of said peanuts 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 dealers punchboards, push or pull cards or other lottery devices, either with assortments of said peanuts or other merchandise or separately, which said punchboards, push or pull cards or other lottery devices are to be used or may be used in selling or distributing said peanuts or other merchandise to the general public.

3. Selling or otherwise disposing of said peanuts or any other merchandise by the use of punchboards, push or pull cards or any other lottery device or devices.

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

FAIRFIELD ENGINEERING COMPANY

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

Docket 3850. Complaint, July 14, 1939—Decision, Aug. 14, 1939

Where a corporation engaged in manufacture, sale, and distribution of its "Fairfield Coal Distributors" and "Fairfield NON-SEGREGATING Coal Distributors," for distribution of coal to stoker hoppers in large steam boilers; in advertisements in catalogs, circulars and other printed or written matter distributed to members of purchasing public in various States and in the District of Columbia—

Represented, through use of terms "nonsegregating", and such statements and representations as "FAIRFIELD NONSEGREGATING COAL DISTRIBUTORS," "Fairfield distributors * * *. Coal is delivered across the entire grate surface of the stoker just as it comes from the bunkers, assuring a uniform fuel bed," and "Uniform distribution of coarse and fine coal will result in higher boiler efficiency," that its said coal distributor was a nonsegregating one, within meaning of term as used and understood in trade by heating experts and by purchasing public, notwithstanding fact its said products were not completely nonsegregating distributors or mechanisms which, as used and understood as aforesaid from said term, caused uniform layer of fine and coarse coal to be delivered across entire surface of fire boxes or boilers in same proportionate mixture as that in which coals left the bunkers, with resulting uniform fire bed and even flame over entire surface of fire box;

With tendency and capacity to mislead and deceive members of purchasing public into erroneous and mistaken belief that its said statements and representations were literally true, and into purchase of substantial quantities of said coal distributors, because of such erroneous belief, as and for nonsegregating mechanisms as above described, for purchase of which there is preference on the part of purchasers and prospective purchasers as providing economy and efficiency in operation of large steam boilers:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Fairfield Engineering Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fairfield Engineering Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its principal office and place of business at 324 Barnhardt Street, in the city of Marion, State of Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of coal distributors, designated "Fairfield Coal Distributors" and "Fairfield NON-SEGREGATING Coal Distributors," which are designed to distribute coal to stoker hoppers in large steam boilers. Respondent causes said coal distributors, when sold by it, to be transported from its place of business in the State of Ohio to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said coal distributors 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 aforesaid business and for the purpose of inducing the purchase of its said coal distributors, respondent has caused various statements and representations relative to said coal distributors to be inserted in advertisements in catalogs, circulars, and other printed or written matter, all of which are distributed to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations by respondent used and disseminated as aforesaid are the following:

FAIRFIELD NON-SEGREGATING COAL DISTRIBUTORS

Fairfield distributors * * *. Coal is delivered across the entire grate surface of the stoker just as it comes from the bunkers, assuring a uniform fuel bed.

Uniform distribution of coarse and fine coal will result in higher boiler efficiency.

Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent has represented that its said coal distributor is a nonsegregating coal distributor within the meaning of the term nonsegregating coal distributors as it is used and understood in the trade and by heating experts and the purchasing public.

PAR. 4. Various types of distributors are used to deliver coal into the fire boxes of large steam boilers. The term "nonsegregating"

when applied to coal distributors is used and understood in the trade and by heating experts and members of the purchasing public to mean a distributor which causes a uniform layer of fine and coarse coal to be delivered across the entire surface of the fire boxes of boilers. The coarse and fine coals are not segregated in this process of distribution, but are delivered to the surface of the fire box in the same proportionate mixture as when the coals leave the bunkers. The distribution of fine and coarse coal in this manner results in a uniform fire bed and an even flame over the entire surface of the fire box. There is now, and has been at all times mentioned herein, a preference on the part of purchasers and prospective purchasers of coal distributors for nonsegregating coal distributors because of their belief that economy and efficiency in the operation of large steam boilers can be obtained by reason of the use of such distributors.

PAR. 5. In truth and in fact the coal distributors which the respondent represents as aforesaid as being nonsegregating coal distributors are not nonsegregating coal distributors within the meaning of that term as it is used and understood in the trade and by heating engineers and the purchasing public as hereinabove described.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such false, deceptive, and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said coal distributors because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 14th day of July 1939, issued and served its complaint in this proceeding upon respondent Fairfield Engineering Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 27th day of July, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening

procedure and further hearing as to said facts. 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, Fairfield Engineering Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its principal office and place of business at 324 Barnhardt Street, in the city of Marion, State of Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of coal distributors, designated "Fairfield Coal Distributors" and "Fairfield Non-Segregating Coal Distributors," which are designed to distribute coal to stoker hoppers in large steam boilers. Respondent causes said coal distributors, when sold by it, to be transported from its place of business in the State of Ohio to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said coal distributors 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 aforesaid business and for the purpose of inducing the purchase of its said coal distributors, respondent has caused various statements and representations relative to said coal distributors to be inserted in advertisements in catalogs, circulars, and other printed or written matter, all of which are distributed to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations by respondent used and disseminated as aforesaid are the following:

FAIRFIELD NON-SEGREGATING COAL DISTRIBUTORS.

Fairfield distributors * * *. Coal is delivered across the entire grate surface of the stoker just as it comes from the bunkers, assuring a uniform fuel bed.

Uniform distribution of coarse and fine coal will result in higher boiler efficiency.

Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the re-

spondent has represented that its said coal distributor is a nonsegregating coal distributor within the meaning of the term nonsegregating coal distributors as it is used and understood in the trade and by heating experts and the purchasing public.

PAR. 4. Various types of distributors are used to deliver coal into the fire boxes of large steam boilers. The term "nonsegregating" when applied to coal distributors is used and understood in the trade and by heating experts and members of the purchasing public to mean a distributor which causes a uniform layer of fine and coarse coal to be delivered across the entire surface of the fire boxes of boilers. The coarse and fine coals are not segregated in this process of distribution, but are delivered to the surface of the fire box in the same proportionate mixture as when the coals leave the bunkers. The distribution of fine and coarse coal in this manner results in a uniform fire bed and an even flame over the entire surface of the fire box. There is now, and has been at all times mentioned herein, a preference on the part of purchasers and prospective purchasers of coal distributors for nonsegregating coal distributors because of their belief that economy and efficiency in the operation of large steam boilers can be obtained by reason of the use of such distributors.

PAR. 5. In truth and in fact the coal distributors which the respondent represents as aforesaid as being nonsegregating coal distributors are not completely nonsegregating distributors.

PAR. 6. The use by the respondent of the aforesaid statements and representations has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are literally true and into the purchase of substantial quantities of respondent's said coal distributors because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts,

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, Fairfield Engineering Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of coal distributors now designated as "Fairfield Coal Distributors" and "Fairfield Non-Segregating Coal Distributors" or any other coal distributors of substantially similar design, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the use of the term "nonsegregating," or any other term of similar import or meaning, or in any other manner, that such coal distributors are nonsegregating coal distributors or are distributors which cause an uniform layer of fine and coarse coal to be delivered across the entire surface of the fire boxes of the boilers.

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

DEARBORN SUPPLY COMPANY

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

Docket 3593. Complaint, Sept. 17, 1938—Decision, Aug. 15, 1939

Where a corporation engaged in manufacture, sale, and distribution of line of cosmetics under various names, and including its "Mercolized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot," and "Phelactine," to purchasers in other States and in the District of Columbia, in active and substantial competition with others likewise engaged in sale and distribution of cosmetics in commerce as aforesaid; in advertising its said products through circulars and folders distributed to prospective purchasers thereof in various States and through magazines of general circulation—

(*a*) Represented, directly and by inference, that its said "Mercolized Wax" absorbed surface skin and surface discolorations, blemishes, and impurities, and removed all coarseness, blackheads, tan, etc., therefrom, and cleansed, softened, bleached, lubricated, and protected the skin, nourishing it and helping it renew itself, and constituted natural way to make it beautiful, and all-in-one cleansing, softening, and beautifying cream and all-purpose beauty aid, facts being said "Mercolized Wax" did not absorb surface skin or surface discolorations, etc., remove coarseness, blackheads, etc., or cleanse and otherwise affect the skin and accomplish the results above set out and claimed, and did not constitute an all-in-one cream or all-purpose beauty aid as above described, but, by virtue of amount of ammoniated mercury contained therein, possessed bleaching qualities and constituted skin bleach which, as below set forth, might be injurious;

(*b*) Failed to reveal, in advertisements which it thus disseminated, and which were intended and calculated to induce purchase of its said products, that said "Mercolized Wax" contained ammoniated mercury as aforesaid, and that said preparation could not be used safely by all persons and might be injurious when used by some, due to said content, and might cause injurious effects when applied to cut, bruised, irritated, or damaged skin or to large area of the body;

(*c*) Represented that its said "Parker-Belmont Beauty Cream" was a skillful scientific blend of creams for pore-deep cleansing, clearing, softening, lubricating, and all-around beautifying of the skin, and an oxygen cream which bleached skin, making it lighter by two or three shades, and a blend of all creams required by skin, and which normalized either dry or oily skin, facts being it was not a skillful or scientific blend of creams or efficacious for pore-deep cleansing or for other results above set forth, and was not an oxygen cream or blend as above claimed, and would not accomplish other results above represented;

(*d*) Represented that its said "Saxolite Astringent" was a skin tonic which smoothed out wrinkles and age lines, refined coarse pores, eliminated oils and gave skin fresh, clean, lively appearance, facts being it would not accomplish results aforesaid and was not skin tonic;

(*e*) Represented that its said "Powdered Tarkroot," used as a "beauty mask," would revive and refresh fatigued and drooping face more quickly or completely than other products for similar usage, and that it smoothed out wrinkles and lines, pulled relaxed and sagging contours into proper position, and purged pores of all impurities, so as to nourish drooping tissues, and beautified the skin by tightening, purifying, and stimulating it, and renewed complexion, facts being it would not function as above set forth or accomplish such results; and

(*f*) Represented that its said "Phelactine" depilatory was different from and quicker and simpler to use than other hair removers, and removed superfluous hair gently and that use thereof caused skin to be smooth, soft, and hair free, facts being its said preparation was no different from any number of hair removers on the market, and no quicker or simpler to use, did not remove superfluous hair gently nor leave skin smooth, etc., as above claimed;

With effect of causing members of purchasing public to have erroneous and mistaken belief that said statements and representations were true, and to purchase substantial quantity of its said products because of such belief, and of thereby diverting trade in commerce unfairly to it from many competitors who distribute and sell cosmetics in commerce and do not in any manner misrepresent the quality or character of their respective products or effectiveness thereof:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. C. S. Cox for the Commission.

Mr. John Walsh, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Dearborn Supply Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Dearborn Supply Co., is a corporation, created and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 2350 Clybourn Avenue, Chicago, Ill.

Par. 2. Respondent is now and for more than 12 years last past has been engaged in the business of compounding, distributing, and selling a line of cosmetics under various names, some of which are: "Merco-

lized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot," and "Phelactine." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to its customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetics 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 respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among 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 cosmetics, respondent, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, has made many statements and representations concerning the character and nature of said cosmetics and concerning the results obtained from their use. By the means and in the manner aforesaid, the respondent makes, among others, statements concerning its products as hereinafter set forth:

(*a*) Among, and typical of, the representations made by respondent concerning its product "Mercolized Wax" are the following:

Pure Mercolized Wax.

Pure Mercolized Wax Beautifies the Skin. Bleaches—Cleanses—Nourishes, Softens and Protects.

You will find only Mercolized Wax * * * actually absorbs the discolored outer scales in tiny flake-like particles clearing away the grimy, dirt-laden surface skin.

Free your skin of blemishes and all discolorations that mar its natural loveliness with our Mercolized Wax.

Mercolized Wax brings to you a simple, natural way of beautifying the skin and keeping it young. * * * contains active ingredients that actually absorb the surface skin with all its discolorations and blemishes. * * * Gradually you will notice the new clearness and smoothness of your skin. Soon the entire discolored outer layer of skin will have disappeared and fresh underskin which forms your new complexion appears soft, white and youthfully beautiful. Mercolized Wax brings out the hidden beauty in your skin.

There is only one way to completely beautify a discolored blemished complexion and that one way is to take off the worn-out surface skin by absorbing it with pure Mercolized Wax.

Coarseness, roughness and other blemishes that rob the skin of youthful beauty are dissolved with the surface skin.

Mercolized Wax will convert a faded, worn-out, or discolored complexion into one of captivating loveliness.

It * * * lubricates * * *.

It clears away freckles, tan, oiliness, sunburn or any other blemishes.

Invisible particles of aged skin are freed and all defects such as blackheads, tan, freckles and large pores disappear.

Make yours a beautiful skin with Mercolized Wax Cream.

Is your skin clear, smooth and young looking? It Should be and it Can be. * * * Eagerly and deftly Mercolized Wax Cream goes about its task of flaking off, superficially discolored outer layer of skin, revealing the young, fresh looking underskin. It really helps the skin to renew itself. Your skin emerges from a series of Mercolized Wax Cream applications looking more like its radiant, natural, beautiful self than it has looked in many a day. * * *

Complete renovation of the complexion in from one to three weeks should result from following the above instructions closely.

Mercolized Wax Cream keeps your skin young looking. * * * This simple all-in-one cleansing, softening and beautifying cream has been a favorite for over a quarter of a century with lovely women the world over.

This simple all-purpose beauty aid is the only cream necessary for the proper care of your skin.

(*b*) Among, and typical of, the representations made by respondent concerning its product "Parker-Belmont Beauty Cream" are the following:

Wonderful oxygen cream bleaches skin.

Parker-Belmont Beauty Cream beautifies any skin.

A skillful scientific blending of creams for bleaching, pore-deep cleansing, clearing, softening, lubricating and all-around beautifying.

Parker-Belmont Beauty Cream whitens skin quickly.

Dark skin is lightened and whitened two or three shades.

This single cream is a blend of all the creams your skin requires.

Parker-Belmont Beauty Cream normalizes a dry to too oily skin. It is soothing to sensitive tissues.

(*c*) Among, and typical of, the representations made by respondent concerning its products "Powdered Saxolite" are the following:

Saxolite Astringent is a refreshing skin tonic. Smoothes out wrinkles and age lines. Refines coarse pores. Eliminates oiliness.

Gives your skin a fresh, clean, lively appearance.

(*d*) Among, and typical of, the representations made by respondent concerning its product "Powdered Tarkroot" are the following:

A Tarkroot Beauty Mask revives and refreshes a fatigued, drooping face more quickly and completely than anything else can.

It is beneficial for almost every condition such as age lines, wrinkles, enlarged pores, blackheads and other surface blemishes.

Wrinkles and age lines are smoothed out. Relaxed, sagging contours are pulled up into proper position. The circulation is aroused to nourish the drooping tissues. Pores are purged of all impurities.

Tarkroot Beauty Mask wakes up dull skin!

Tarkroot Face Rester relieves facial fatigue.

The quickest way to renew your complexion is to give yourself a facial pack treatment with Tarkroot Beauty Mask.

Beautify your skin with Tarkroot Face Mask.

Tarkroot performs a four-purpose plan of beautifying by tightening, refining, purifying and stimulating.

(*e*) Among, and typical of, the representations made by respondent concerning its product "Phelactine" are the following:

Try Phelactine Depilatory, removes superfluous hair gently. Leaves skin smooth, soft and hair-free. Simple to use.

Try Phelactine—the "different" hair remover.

Excellent for removing superfluous hair from your face. Quicker to use.

All of said statements, together with other statements of similar import and meaning, appearing in respondent's advertising literature, disseminated as aforesaid, purport to be descriptive of respondent's products and of their effectiveness in use. In all of its advertising literature, respondent, directly and by inference, through the statements and representations herein set out and through other statements and representations of similar import and effect, represents that the product "Mercolized Wax" is a "wax"; that said preparation absorbs the surface skin and surface discolorations, blemishes, and impurities; that it removes all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin, and cleanses, softens, bleaches, lubricates, and protects the skin; that it is a natural way to make the skin beautiful; that it nourishes the skin, helps the skin renew itself, and is an all-in-one cleansing, softening and beautifying cream and an all-purpose beauty aid.

In the manner aforesaid, respondent represents that the product "Parker-Belmont Beauty Cream" is a skillful, scientific blend of creams for pore-deep cleansing, clearing, softening, lubricating, and all-around beautifying of the skin; that it is an oxygen cream that bleaches the skin, making the skin lighter by two or three shades; and that it is a blend of all the creams a skin requires and that it normalizes either a dry or an oily skin.

In the manner aforesaid, respondent represents that its product "Saxolite Astringent" is a skin tonic which smoothes out wrinkles and age lines, refines coarse pores, eliminates oiliness, giving the skin a fresh, clean, lively appearance.

In the manner aforesaid, the respondent represents that its product "Powdered Tarkroot," when used as a "beauty mask," will revive and refresh a "fatigued" and "drooping" face more quickly and completely than other products, smoothing out wrinkles and age lines, pulling "relaxed" and sagging contours into proper position, purging the pores of all impurities, and arousing the circulation so as to nourish the "drooping" tissues; that said product beautifies the skin

by tightening, purifying, refining, and stimulating, and is the quickest way to "renew" the complexion.

In the manner aforesaid, the respondent represents that its product "Phelactine" is "different" from other hair removers; that it is quicker and simpler to use, removing superfluous hair gently, leaving the skin smooth, soft, and hair free.

PAR. 5. Respondent's representations and implications as to the value and usefulness of said products are false or grossly exaggerated and greatly exceed those which might truthfully be made for said products. In truth and in fact the product "Mercolized Wax" is not a wax and said product does not absorb the surface skin and surface discolorations, blemishes, and impurities; it does not remove all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin; it does not cleanse, soften, bleach, lubricate, and protect the skin; it is not a natural way to make the skin beautiful; and it does not nourish the skin, help the skin to renew itself, and it is not an all-in-one cleansing, softening, and beautifying cream or an all-purpose beauty aid. In truth and in fact the product "Parker-Belmont Beauty Cream" is not a skillful or scientific blend of creams, nor is it efficacious for pore-deep cleansing, clearing, softening, lubricating, and for all-around beautifying of the skin; it is not an oxygen cream and it will not bleach the skin, making it two or three shades lighter and it is not a "blend of all the creams" the skin requires, nor does it normalize either a dry or an oily skin. In truth and in fact the product "Saxolite Astringent" is not a skin tonic nor will it smooth out wrinkles or age lines, refine coarse pores, eliminate oiliness or give the skin a fresh, clean, lively appearance. In truth and in fact the product "Tarkroot Beauty Mask" when used as a "beauty mask" will not revive and refresh a "fatigued" and "drooping" face more quickly and completely than will other products; nor will it smooth out wrinkles and age lines or pull "relaxed" and sagging contours into the proper position or purge the pores of all impurities, and it will not arouse the circulation so as to nourish the "drooping" tissues or beautify the skin by tightening, purifying, refining, and stimulating and it is not the quickest way to, nor does it, "renew" the complexion. In truth and in fact the product "Phelactine Depilatory" is not different from any number of hair removers on the market and is no quicker or simpler to use and it does not remove superfluous hair gently, leaving the skin smooth, soft, and hair free.

In truth and in fact the product "Mercolized Wax" has a tendency to cause removal of the surface skin but leaves the skin with deeper

hues and blemishes than those present originally and constant and continuous use of this product not only accentuates the blemishes present in the surface skin but may, under certain conditions, be harmful to the user thereof because of the ingredients from which said product is composed.

PAR. 6. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic.

PAR. 7. There are among the competitors of the respondent many who distribute and sell cosmetics in said commerce who do not in any manner misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 8. The use of each and all of the false and misleading representations and implications made and used by the respondent in designating and describing its said products and their effectiveness when used, and said false advertisements as hereinabove alleged, has had and now has a tendency and capacity to and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said representations and implications are true. As a result of such erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade in said commerce has been diverted unfairly to the respondent from its competitors who truthfully advertise their respective products and the effectiveness thereof when used, and thereby 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 aforesaid 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 17th day of September 1938,

[1] Findings and order published as modified by Commission order dated October 16, 1939, which, among other things, in response to petition and supplemental petition of respondent struck out portion of par. 11 of the findings and portion of par. 1 of the order relating to the safety of respondent's mercolized wax by virtue of ammoniated mercury therein contained and reopened case solely for purpose of taking additional testimony in support of allegations of complaint and in opposition thereto with respect to injurious effects which might result from use of said mercolized wax.

issued and served its complaint in this proceeding upon said respondent, Dearborn Supply Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. On October 26, 1938, 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 and W. T. Kelly, 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, accepted, and filed, 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 respondent, Dearborn Supply Co., is a corporation created and existing under and by virtue of the laws of the State of Illinois, and having its office and principal place of business at 2350 Clybourn Avenue in the city of Chicago, within the State of Illinois. Its officers are Patrick J. Kelly, president and treasurer; Miss M. W. Healy, vice president and assistant treasurer; and Mrs. Alice K. Moser, secretary.

PAR. 2. The respondent is now, and for more than 12 years last past has been, engaged in the manufacture, sale, and distribution of a line of cosmetics designated by various names. Among such cosmetics are: "Mercolized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot," and "Phelactine." The respondent causes all of the said products, when sold, to be transported from its place of business in the State of Illinois to the respective purchasers thereof located in States other than the State of Illinois and in the District of Columbia. The respondent maintains, and for more than 12 years last past has maintained, a course of trade in said cosmetics herein mentioned in 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, the respondent is, and has been for more than 12 years last past, in active and substantial competition with various other corporations, partnerships, and individuals likewise engaged in the sale and distribution of cosmetics 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 aforesaid business and for the purpose of inducing the purchase of said cosmetics, the respondent has, by means of advertising circulars and folders distributed to prospective purchasers of said cosmetics, situated in various States of the United States and also by means of advertisements inserted in magazines having a general circulation throughout the United States, made many statements and representations concerning the character and nature of its said cosmetics hereinabove mentioned and concerning the results obtained from the use of said cosmetics. The respondent has in its said advertisements, circular, and folders caused to be made, among others, the following statements concerning its said cosmetics herein mentioned.

Pure Mercolized Wax.

Pure Mercolized Wax beautifies the Skin. Bleaches—Cleanses—Nourishes, Softens and Protects.

You will find only Mercolized Wax * * * actually absorbs the discolored outer scales in tiny flake-like particles clearing away the grimy, dirt-laden surface skin.

Free your skin of blemishes and all discolorations that mar its natural loveliness with our Mercolized Wax.

Mercolized Wax brings to you a simple, natural way of beautifying the skin and keeping it young. * * * contains active ingredients that actually absorb the surface skin with all its discolorations and blemishes * * * Gradually you will notice the new clearness and smoothness of your skin. Soon the entire discolored outer layer of skin will have disappeared and fresh underskin which forms your new complexion appears, soft, white and youthfully beautiful. Mercolized Wax brings out the hidden beauty in your skin.

There is only one way to completely beautify a discolored blemished complexion and that one way is to take off the worn out surface skin by absorbing it with pure Mercolized Wax.

Coarseness, roughness and other blemishes that rob the skin of youthful beauty are dissolved with the surface skin.

Mercolized Wax will convert a faded, wornout, or discolored complexion into one of captivating loveliness.

It * * * lubricates * * *.

It clears away freckles, tan, oiliness, sunburn or any other blemishes.

Invisible particles of aged skin are freed and all defects such as blackheads, tan, freckles and large pores disappear.

Make yours a beautiful skin with Mercolized Wax Cream.

Is your skin clear, smooth and young looking? It SHOULD be and it CAN be. * * * Eagerly and deftly Mercolized Wax Cream goes about its task of flaking off, superficially discolored outer layer of skin, revealing the young, fresh looking underskin. It really helps the skin to renew itself. Your skin emerges from a series of Mercolized Wax Cream applications looking more like its radiant, natural beautiful self than it has looked in many a day. * * *.

Complete renovation of the complexion in from one to three weeks should result from following the above instructions closely.

Mercolized Wax Cream keeps your skin young looking. * * * This simple all-in-one cleansing, softening and beautifying cream has been a favorite for over a quarter of a century with lovely women the world over.

This simple all-purpose beauty aid is the only cream necessary for the proper care of your skin.

Wonderful oxygen cream bleaches skin.

Parker-Belmont Beauty Cream beautifies any skin.

A skillful scientific blending of creams for bleaching, pore-deep cleansing, clearing, softening, lubricating and all-around beautifying.

Parker-Belmont Beauty Cream whitens skin quickly.

Dark skin is lightened and whitened two or three shades.

This single cream is a blend of all the creams your skin requires.

Parker-Belmont Beauty Cream normalizes a dry to too oily skin. It is soothing to sensitive tissues.

Saxolite Astringent is a refreshing skin tonic. Smooths out wrinkles and age lines. Refines coarse pores. Eliminates oiliness.

Gives your skin a fresh, clean, lively appearance.

A Tarkroot Beauty Mask revives and refreshes a fatigued, drooping face more quickly and completely than anything else can.

It is beneficial for almost every condition such as age lines, wrinkles, enlarged pores, blackheads and other surface blemishes.

Wrinkles and age lines are smoothed out. Relaxed, sagging contours are pulled up into proper position. The circulation is aroused to nourish the drooping tissues. Pores are purged of all impurities.

Tarkroot Beauty Mask wakes up dull skin!

Tarkroot Face Rester relieves facial fatigue.

The quickest way to renew your complexion is to give yourself a facial pack treatment with Tarkroot Beauty Mask.

Beautify your skin with Tarkroot Face Mask.

Tarkroot performs a four-purpose plan of beautifying by tightening, refining, purifying and stimulating.

Try Phelactine Depilatory, removes superfluous hair gently. Leaves skin smooth, soft and hair-free. Simple to use.

Try Phelactine—the "different" hair remover.

Excellent for removing superfluous hair from your face. Quicker to use.

PAR. 4. All of said statements and representations set-out in paragraph 3 hereof, together with numerous other statements of like or similar import and meaning which also appear in the respondent's advertising literature, purport to be descriptive of the respondent's various cosmetics hereinabove mentioned and of the results to be obtained by their use.

PAR. 5. The respondent has in its advertising literature, directly and by inference, through the statements and representations which are set out herein in paragraph 3, and through other statements and representations of similar or like import and effect, represented and does now represent that the product "Mercolized Wax"

(*a*) is, in fact, a "wax."

(*b*) that "Mercolized Wax" absorbs the surface skin and surface discolorations, blemishes and impurities.

(*c*) that "Mercolized Wax" removes all coarseness, roughness, blackheads, tan, freckles, sunburn and large pores from the skin, and cleanses, softens, bleaches, lubricates and protects the skin.

(*d*) that "Mercolized Wax" is a natural way to make the skin beautiful.

(*e*) that "Mercolized Wax" nourishes the skin, helps the skin renew itself, and is an all-in-one cleansing, softening and beautifying cream and an all-purpose beauty aid.

PAR. 6. The respondent has in its advertising literature, directly and by inference, through the statements and representations which are set out herein in paragraph 3, and through other statements and representations of similar or like import and effect, represented and does now represent that the product "Parker-Belmont Beauty Cream"—

(*a*) is a skillful, scientific blend of creams for pore-deep cleansing, clearing, softening, lubricating, and all-around beautifying of the skin.

(*b*) that "Parker-Belmont Beauty Cream" is an oxygen cream that bleaches the skin, making the skin lighter by two or three shades.

(*c*) that "Parker-Belmont Beauty Cream" is a blend of all the creams a skin requires and that it normalizes either a dry or an oily skin.

PAR. 7. The respondent has in its advertising literature, directly and by inference, through the statements and representations which are set out herein in paragraph 3, and through other statements and representations of similar or like import and effect, represented and does now represent that the product "Saxolite Astringent"

(*a*) is a skin tonic which smooths out wrinkles and age lines, refines coarse pores, eliminates oiliness, giving the skin a fresh, clean, lively appearance.

PAR. 8. The respondent has in its advertising literature, directly and by inference, through the statements and representations which are set out herein in paragraph 3, and through other statements and

representations of similar or like import and effect, represented and does now represent that the product "Powdered Tarkroot,"

(*a*) when used as a "beauty mask", will revive and refresh a "fatigued" and "drooping" face more quickly and completely than other products, smoothing out wrinkles and age lines, pulling "relaxed" and sagging contours into proper position, purging the pores of all impurities, and arousing the circulation so as to nourish the "drooping" tissues.

(*b*) that "Powdered Tarkroot" beautifies the skin by tightening, purifying, refining and stimulating, and is the quickest way to "renew" the complexion.

PAR. 9. The respondent has in its advertising literature, directly and by inference, through the statements and representations which are set out herein in paragraph 3, and through other statements and representations of similar or like import and effect, represented and does now represent that the product "Phelactine"—

(*a*) is different from other hair removers.

(*b*) that "Phelactine" is quicker and simpler to use, removing superfluous hair gently, leaving the skin smooth, soft and hair-free.

PAR. 10. The formula for the preparation manufactured and sold by said respondent under the name "Mercolized Wax" is as follows:

Ozokerite Wax
India Wax
Carnauba Wax
Mineral Oil
Water
Borax
Zinc Oxide
White Precipitate
Perfume
Bees Wax
Paraffine Wax

PAR. 11. The term "Mercolized Wax" denotes and describes a product containing a substantial amount of wax admixed with mercury and while the product designated "Mercolized Wax" does not depend upon its waxy constituency for its therapeutic effect, it contains a substantial amount of various waxes amounting to a total of approximately 16 percent. Said preparation has contained as much as 7½ percent ammoniated mercury and is now said to presently contain 3 percent ammoniated mercury. The preparation designated as "Mercolized Wax" does not absorb the surface skin or surface discolorations, blemishes, or impurities. The use of such product does not remove coarseness, roughness, blackheads, tan, freckles, sun-

burn, or large pores from the skin. Such preparation does not cleanse, soften, lubricate, or protect the skin. The use of such preparation is not a natural way to make the skin beautiful. "Mercolized Wax" does not nourish the skin or help the skin to renew itself. Such preparation is not an all-in-one cleansing, softening, or beautifying cream or an all-purpose beauty aid.

PAR. 12. The formula for the preparation manufactured and sold by the respondent under the name "Parker-Belmont Beauty Cream" is as follows:

Ozokerite Wax
India Wax
Carnauba Wax
Bees Wax
Paraffine Wax
Stanolene
Mineral Oil
Zinc Oxide
Zinc Perborate

PAR. 13. The preparation manufactured and sold by the respondent under the name "Parker-Belmont Beauty Cream" is not a skillful or scientific blend of creams; it is not efficacious for pore-deep cleansing, clearing, softening, lubricating, or for all-around beautifying of the skin; it is not an oxygen cream and it will not bleach the skin, making it two or three shades lighter and it is not a blend of all the creams the skin requires. Such preparation does not normalize either a dry or an oily skin.

PAR. 14. The formula for the preparation manufactured and sold by the respondent under the name "Saxolite Astringent" is as follows:

Alum
Epsom Salts
Eucalyptus Oil

PAR. 15. The preparation manufactured and sold by the respondent under the name "Saxolite Astringent" will not smooth out wrinkles or age lines, refine coarse pores, or eliminate oiliness, it is not a skin tonic and it does not give the skin a fresh, clean, lovely appearance.

PAR. 16. The formula for the preparation manufactured and sold by the respondent under the name "Tarkroot Beauty Mask" is as follows:

Boric Acid
Acacia Powder
Egg Albumen

Dissolve in lemon juice or
milk to make mask.

PAR. 17. The preparation manufactured and sold by the respondent under the designation "Tarkroot Beauty Mask" when used as a "beauty mask" will not in fact revive or refresh a "fatigued" or "drooping" face more quickly and completely than will other products; nor will it smooth out wrinkles and age lines or pull "relaxed" and sagging contours into the proper position or purge the pores of all impurities. Such preparation will not arouse the circulation so as to nourish the "drooping" tissues or beautify the skin by tightening, purifying, refining, and stimulating, and it is not the quickest way to nor does it "renew" the complexion.

PAR. 18. The formula for the preparation manufactured and sold by the respondent under the name "Phelactine Depilatory" is as follows:

Resin
Bees Wax

PAR. 19. The preparation manufactured and sold in commerce by the respondent under the name "Phelactine Depilatory" is not different from any number of hair removers on the market and is no quicker or simpler to use, and it does not remove superfluous hair gently; nor does the use of said preparation leave the skin smooth, soft, and hair free.

PAR. 20. There are among the competitors of the respondent, as described in paragraph 2 hereof, many who distribute and sell cosmetics in said commerce who do not in any manner misrepresent the quality or character of their respective products or their effectiveness in use.

PAR. 21. The use by the respondent of the said statements and representations disseminated as aforesaid has the capacity and tendency to and does cause members of the purchasing public to have the erroneous and mistaken belief that said statements and representations are true and to purchase a substantial quantity of respondent's said products because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the 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, Dearborn Supply Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of cosmetic preparations containing drugs now designated by the names of "Mercolized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot," and "Phelactine," or any other cosmetic preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or under any other name or names, or disseminating or causing to be disseminated, any advertisements by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said cosmetic preparations, which said advertisements represent, directly or through implication:

1. That said cosmetic preparation "Mercolized Wax" absorbs the surface skin, surface discolorations, blemishes, or impurities, or removes coarseness, roughness, blackheads, tan, freckles, sunburn, or large pores from the skin or cleanses, softens, lubricates, nourishes, or protects the skin; or aids the skin in renewing itself; or that the use of said preparation is a natural way to make the skin beautiful; or that said preparation is an all-in-one cleansing, softening or beautifying cream or an all-purpose beauty aid.

2. That said preparation "Parker-Belmont Beauty Cream" is a skillful or scientific blend of creams or is efficacious for pore-deep cleansing, clearing, softening, lubricating, or all-around beautifying

of the skin, or that said preparation is an oxygen cream or will bleach the skin or make the skin lighter by two or more shades or is a blend of all the creams the skin requires; or that said preparation normalizes either a dry or an oily skin.

3. That said preparation "Saxolite Astringent" is a skin tonic or smooths out wrinkles or age lines, refines coarse pores, eliminates oiliness or gives the skin a fresh, clean, lively appearance.

4. That said preparation "Powdered Tarkroot," when used as a beauty mask, will revive or refresh a fatigued or drooping face more quickly or completely than other products designed and intended for similar usage; or that said preparation will smooth out wrinkles or age lines or pull relaxed and sagging contours into proper position or purge the pores of all impurities or arouse the circulation so as to nourish the drooping tissues; or that said preparation beautifies the skin by tightening, purifying, refining, or stimulating the skin or will renew the complexion.

5. That said preparation "Phelactine" is different from or quicker and simpler to use than other hair removers or that said preparation removes superfluous hair gently or that the use thereof causes the skin to be smooth, soft, and hair free.

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

IN THE MATTER OF

PURITAN UNDERGARMENT CORPORATION

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

Docket 3810. Complaint, June 7, 1939—Decision, Aug. 23, 1939

Where a corporation engaged in manufacture, sale, and distribution of women's undergarments to and through wholesalers, retailers, and other purchasers; in furtherance of a practice of representing falsely the constituent fiber or material of which the various products sold and distributed by it were made and, in so doing, of causing false statements and representations purporting to be descriptive of its said products and their respective constituent fiber or material, as aforesaid, to be inserted in catalogs and price lists and placed on tags, labels, and markers attached to such products—

(*a*) Represented, as typical of acts and practices above described, in catalogs and price lists and through tags, labels, and markers, that certain undergarments made and sold by it contained 15 percent wool and 30 percent wool, respectively, notwithstanding fact former garment was composed of 87 percent cotton, 10 percent rayon, and 3 percent wool, and other of 10.5 percent wool with remainder made up of cotton and rayon, and said undergarments did not contain percentages represented of wool, understood by purchasing and consuming public from said word, unqualified, as definitely and specifically meaning virgin or unused, as distinguished from reclaimed, wool, and decidedly preferred by prospective purchasers of such garments by reason of established reputation of fabrics made thereof for cold resistance and wearing qualities over those composed of cotton, rayon, or other fibers; and

(*b*) Sold and distributed, as typical act and practice, undergarments which appeared to be partly made of silk, without disclosing that fiber or material in question was in fact rayon and not silk, long definitely and specifically understood by purchasing public as meaning product of cocoon of silkworm, and decidedly preferred by reason of reputation for superior cold resistance and other preeminent qualities, as included in fabrics made of wool and silk over those made of wool and rayon, in case of such garments over garments made of fabrics of wool and rayon, with result that purchasing public, observing and feeling its said products, in fact containing, as aforesaid, no silk, but, as aforesaid, rayon only (with appearance and feel of silk so as to be practically indistinguishable therefrom by said public), was led mistakenly to believe that garment contained in substantial quantity, silk;

With effect of misleading and deceiving substantial portion of said public into mistaken and erroneous belief that its aforesaid products contained much larger wool content than was actually the fact, and included silk content, and of causing said public to purchase said products as result of such erroneous belief thus engendered:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. W. L. Pack for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Puritan Undergarment Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Puritan Undergarment Corporation, is a corporation organized under the laws of the State of New York, with its office and principal place of business at 1427 DeKalb Avenue in the city of Brooklyn, State of New York. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of women's undergarments. In the course and conduct of its business, respondent sells its said products to wholesale and retail dealers and other purchasers, and during the year last past has caused said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein 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.

PAR. 2. In the course and conduct of its said business the respondent has engaged and is now engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made. In furtherance of this practice, and for the purpose of inducing the purchase of its said products, respondent has caused false statements and representations purporting to be descriptive of such products and their respective constituent fiber or material to be inserted in catalogs and price lists and placed on tags, labels, and markers attached to such products.

PAR. 3. Among and typical of the acts and practices above described, the respondent, in catalogs and price lists and by means of tags, labels, and markers, represents that certain undergarments manufactured and sold by it contain 15 percent wool and 30 percent wool, respectively, when in truth and in fact said garments do not contain such percentage of wool. The garment represented and labeled as containing 15 percent wool actually contains 87 percent cotton, 10 percent rayon, and only 3 percent wool. The garment represented and labeled as containing 30 percent wool does not in

fact contain such percentage of wool but contains only 10.5 percent wool, the remaining content of such garment being cotton and rayon.

PAR. 4. The word "wool" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit, fleece or hair obtained from sheep. Fabrics made of wool have established a reputation of possessing superior cold-resistant and wearing qualities over fabrics made of cotton and other fibers. On account of such reputation, purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of cotton, rayon or other fibers. The unqualified word "wool" has in the minds of the purchasing and consuming public the definite and specific meaning of virgin or unused wool as distinguished from reclaimed wool.

PAR. 5. A further typical act and practice on the part of the respondent is the sale and distribution of undergarments which appear to be made partly of silk, without disclosing that the fiber or material in question is not silk but is in fact rayon. The word "silk" has for many years had in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silkworm. The word "rayon" is the name of a chemical fiber or fabric which simulates silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. Fabrics made of wool and silk have established a reputation for possessing superior cold-resistant and other preeminent qualities over fabrics made of wool and rayon, and on account of such reputation purchasers and prospective purchasers of undergarments have a decided preference for wool and silk fabrics over fabrics made of wool and rayon. The purchasing public, observing and feeling respondent's products are led to mistakenly believe that such products contain a substantial quantity of silk, whereas in truth and in fact they do not contain any silk whatever but contain only rayon, admixed with wool, a fact which is not disclosed by the respondent in the sale and distribution of such products.

PAR. 6. The use by the respondent of the false and misleading representations referred to herein has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent's products contain a much larger wool content than is actually the fact, and that such products contain silk, whereas such products have no silk content. Such false and misleading representations cause and have caused the purchasing public to purchase such products as the result of such erroneous belief engendered as above set forth.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 7, 1939, issued and served its complaint in this proceeding upon respondent, Puritan Undergarment Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 30, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceedings 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, Puritan Undergarment Corporation, is a corporation organized under the laws of the State of New York, with its office and principal place of business at 950 Hart Street in the city of Brooklyn, State of New York. Respondent is now and for more than 1 year last past has been engaged in the manufacture, sale, and distribution of women's undergarments. In the course and conduct of its business respondent sells its said products to wholesale and retail dealers and other purchasers, and during the year last past has caused said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein 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.

PAR. 2. In the course and conduct of its said business, respondent has engaged and is now engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made. In furtherance of this practice and for the purpose of inducing the purchase of its said products, respond-

ent has caused false statements and representations, purporting to be descriptive of such products and their respective constituent fiber or material, to be inserted in catalogs and price lists and placed on tags, labels, and markers attached to such products.

PAR. 3. Among and typical of the acts and practices above described, respondent, in catalogs and price lists and by means of tags, labels, and markers, represents that certain undergarments manufactured and sold by it contain 15 percent wool and 30 percent wool, respectively, when in truth and in fact said garments do not contain such percentage of wool. The garment represented and labeled as containing 15 percent wool actually contains 87 percent cotton, 10 percent rayon and only 3 percent wool. The garment represented and labeled as containing 30 percent wool does not, in fact, contain such percentage of wool but contains only 10.5 percent wool, the remaining content of such garment being cotton and rayon.

PAR. 4. The word "wool" for many years last past has had and now has in the minds of the purchasing public, a definite and specific meaning, to wit, fleece or hair obtained from sheep. Fabrics made of wool have established a reputation of possessing superior cold-resistant and wearing qualities over fabrics made of cotton and other fibers. On account of such reputation purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of cotton, rayon or other fibers. The unqualified word "wool" has in the minds of the purchasing and consuming public the definite and specific meaning of virgin or unused wool, as distinguished from reclaimed wool.

PAR. 5. A further typical act and practice on the part of the respondent is the sale and distribution of undergarments which appear to be made partly of silk, without disclosing that the fiber or material in question is not silk but is, in fact, rayon. The word "silk" has for many years had in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silkworm. The word "rayon" is the name of a chemical fiber or fabric which simulates silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. Fabrics made of wool and silk have established a reputation for possessing superior cold-resistant and other preeminent qualities over fabrics made of wool and rayon, and on account of such reputation purchasers, and prospective purchasers of undergarments, have a decided preference for wool and silk fabrics over fabrics made of wool and rayon. The purchasing public, observing and feeling respondent's products, are led to mistakenly believe that such products contain a substantial quantity of silk, whereas in truth and in

fact they do not contain any silk whatever but contain only rayon admixed with wool, a fact which is not disclosed by respondent in the sale and distribution of such products.

PAR. 6. The use by respondent of the false and misleading representations referred to herein has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent's products contain a much larger wool content that is actually the fact, and that such products contain silk, whereas such products have no silk content. Such false and misleading representations cause and have caused the purchasing public to purchase such products as the result of such erroneous belief engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Puritan Undergarment Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of women's wearing apparel in Commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are composed of fibers or materials other than those of which they are actually composed.

2. Representing that any garment or fabric has a stated percentage of wool unless, in fact, such garment or fabric does contain wool in the proportion stated.

3. Advertising, offering for sale or selling wearing apparel or fabrics composed in whole or in part of rayon without clearly dis-

closing the fact that such garments or fabrics are composed of rayon, and when such garments or fabrics are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

This order shall not be construed as permitting the use of the unqualified word "wool" to designate, describe or refer to any wool which is not virgin or unused wool.

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

MARY ELOISE GAUSS, TRADING AS SPRAGUE-KITCHEN & COMPANY

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

Docket 3821. Complaint, June 15, 1939—Decision, Aug. 23, 1939

Where an individual engaged in manufacture, sale, and distribution of her "Graolene" cosmetic preparation for scalp and hair; in advertisements disseminated through the mails and through circulars and other printed or written matter distributed in commerce among the various States and in the District of Columbia, and which were intended and calculated to induce, directly or indirectly, purchase of said preparation—

(*a*) Represented that said "Graolene" was not a dye, but a preparation which, applied to gray hair, would cause it to change its color without dyeing it, and that use thereof restored original natural color to gray hair and supplied to the hair shaft the materials in which gray hair was deficient, facts being it was a lead sulphur dye and, applied to the hair, dyed the exterior of the hair shaft, color produced by use thereof was artificial dye, and such use did not restore original natural color to gray hair and had no effect on pigment cells of hair shaft, and did not supply to said shaft color pigments, deficiency of which is cause of gray hair;

(*b*) Represented that use thereof caused the scalp, hair, and roots thereof to be normal and healthy, and that it was an effective remedy or cure for dandruff or itching scalp, and would stimulate growth of hair, facts being it would not accomplish such results and did not constitute a competent or effective cure or remedy for said ailment or condition;

(*c*) Represented that it was harmless and that use thereof would produce no injurious effect, facts being salt of lead ingredient might be injurious to health of user, and particularly so where applied to skin on which there were lesions which had broken the continuity of the integument; and

(*d*) Failed to reveal, in its said advertisements disseminated as aforesaid, that use thereof might produce harmful or injurious effect as above noted;

With result of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of her said drug-containing preparation:

Held, That such acts, representations and practices, under the circumstances set forth, were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Mary Eloise Gauss,

an individual trading as Sprague-Kitchen & Co., hereinafter referred to as respondent, has violated the provisions of the 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 respondent, Mary Eloise Gauss, is an individual trading as Sprague-Kitchen & Co. and has her office and principal place of business at 4254 North Hermitage Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the scalp and hair designated "Graolene." Respondent causes said preparation, when sold, to be transported from her aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said preparation 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 her aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning said preparation, by United States mails, and by circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Graolene is *not* a dye. It will make your *gray* or *faded* hair the exact shade and *color* it was prior to the time it became gray; the *original* color.

Apply Graolene once; every day; until the hair is the original color, then, once in one, two, or three weeks as required. After you have restored the original color, Graolene should be applied to the scalp occasionally as a tonic. Cover all of the scalp.

Graolene supplies the *materials* in which *gray* hair is *deficient*, operating through the inside of the hairs; (Hollow tubes) in a perfectly natural manner, thus restoring the *original* color, *without* dyeing them.

Graolene will make your scalp, roots and hair *normal* and *healthy*, and your hair *natural* appearing. * * * Graolene abolishes dandruff; absolutely; stops the *itching* and will *promote the growth* of your hair.

In making Graolene, the only so-called Deleterious Substance, used is *Grain Alcohol*, .008% (8/1000 percent.)

Although Graolene is harmless, it *kills* the dandruff *germ*.

The same bottle of Graolene is used for *all colors* and *all* shades of hair, whether *brown*, *blonde*, *black*, or *red*.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that the preparation "Graolene" is not a dye and that such preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of such preparation will restore the original natural color to gray hair; that the use of such preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of such preparation causes the scalp, the hair and the roots of the hair to be normal and healthy; that such preparation is a competent and effective remedy or cure for dandruff and itching scalp; that said preparation stimulates the growth of hair; and that the application of such preparation to the skin will produce no harmful or injurious effect.

PAR. 5. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact "Graolene" is a lead sulphur dye. Such preparation contains, among other ingredients, sulphur, lead acetate, and ammonia, which, in combination, form lead sulphide. Such preparation, when applied to the hair, dyes the exterior of the hair shaft, and the color produced by its use is an artificial dye. The use of such preparation will not restore the original natural color to gray hair and has no effect on the pigment cells of the hair shaft. The use of such preparation does not supply to the hair shaft the color pigments, a deficiency of which materials, causes gray hair. The use of such preparation will not cause the scalp, the roots of the hair, or the hair to be normal or healthy. The use of such preparation is not a competent or effective cure or remedy for dandruff or itching scalp. Such preparation does not stimulate the growth of hair. The application of such preparation to the skin may produce a harmful or injurious effect. Such preparation contains, among other ingredients, salt of lead in an amount which may be injurious to the health

of the user thereof, particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said preparation containing drugs.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 15, 1939, issued and served its complaint, in this proceeding upon the respondent, Mary Eloise Gauss, trading as Sprague-Kitchen & Co., charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 1, 1939, the respondent filed her answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the 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 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, Mary Eloise Gauss, is an individual trading as Sprague-Kitchen & Co., and has her office and principal place of business at 4254 North Hermitage Avenue in the city of Chicago, State of Illinois.

PAR. 2 The respondent is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the scalp and hair designated "Graolene." Respondent causes said preparation, when sold, to be transported from her aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the

District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said preparation 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 her aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning said preparation, by United States mails, and by circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Graolene is *not* a dye. It will make your *gray* or *faded* hair the exact shade and *color* it was prior to the time it became gray; the *original* color.

Apply Graolene once; every day; until the hair is the original color, then, once in one, two, or three weeks as required. After you have restored the original color, Graolene should be applied to the scalp occasionally as a tonic. Cover all of the scalp.

Graolene supplies the *materials* in which *gray* hair is *deficient*, operating through the inside of the hairs; (Hollow tubes) in a perfectly natural manner, thus restoring the *original* color, *without* dyeing them.

Graolene will make your scalp, roots and hair *normal* and *healthy*, and your hair *natural* appearing. * * * Graolene abolishes dandruff; absolutely; stops the *itching* and will *promote the growth* of your hair.

In making Graolene, the only so-called Deleterious Substance, used is *Grain Alcohol* .008% (8/1000 percent.)

Although Graolene is harmless, it *kills* the dandruff germ.

The same bottle of Graolene is used for *all colors* and *all* shades of hair, whether *brown*, *blonde*, *black*, or *red*.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that the preparation "Graolene" is not a dye and that such preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of such preparation will restore the original natural color to gray hair; that the use of such preparation

supplies to the hair shaft the materials in which gray hair is deficient; that the use of such preparation causes the scalp, the hair and the roots of the hair to be normal and healthy; that such preparation is a competent and effective remedy or cure for dandruff and itching scalp; that said preparation stimulates the growth of hair; and that the application of such preparation to the skin will produce no harmful or injurious effect.

PAR. 5. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact "Graolene" is a lead sulphur dye. Such preparation contains, among other ingredients, sulphur, lead acetate, and ammonia, which, in combination, form lead sulphide. Such preparation, when applied to the hair, dyes the exterior of the hair shaft, and the color produced by its use is an artificial dye. The use of such preparation will not restore the original natural color to gray hair and has no effect on the pigment cells of the hair shaft. The use of such preparation does not supply to the hair shaft the color pigments, a deficiency of which materials, causes gray hair. The use of such preparation will not cause the scalp, the roots of the hair, or the hair to be normal or healthy. The use of such preparation is not a competent or effective cure or remedy for dandruff or itching scalp. Such preparation does not stimulate the growth of hair. The application of such preparation to the skin may produce a harmful or injurious effect. Such preparation contains, among other ingredients, a salt of lead in an amount which may be injurious to the health of the user thereof, particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said preparation containing drugs.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Mary Eloise Gauss, trading as Sprague-Kitchen & Co., as herein found, have been and are to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, 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, Mary Eloise Gauss, individually and trading as Sprague-Kitchen & Co., or trading under any other name or names, her agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a cosmetic preparation now designated "Graolene," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or by implication, that said preparation is not a dye or is other than a dye, or will cause gray hair to change color without dyeing the hair; or that the use of said preparation will restore the original or natural color to gray hair, or will supply to the hair shaft the materials in which gray hair is deficient, or will cause the scalp, the hair or the roots of the hair to be normal or healthy; or that said preparation is an effective remedy or cure for dandruff or itching scalp, or will stimulate the growth of hair; or that said preparation is harmless or that the use thereof will produce no injurious effect, or which advertisements fail to reveal that the use of said preparation may produce a harmful or injurious effect particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument.

It is further ordered, That the respondent shall, within 60 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.

IN THE MATTER OF

THE WILLIAMS AND WILKINS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3844. Complaint, July 8, 1939—Decision, Aug. 23, 1939

Where a corporation engaged in publication, distribution, and sale of medical and other scientific books, in commerce among the various States and in the District of Columbia, in substantial competition with others engaged in publication, distribution and sale of such books in commerce as aforesaid, and in said District—

Discriminated in price between different purchasers of said books for resale to retailers or ultimate users, through giving, granting, and allowing price discounts from its established list of 20 percent, 25 percent, 30 percent and 35 percent, to various of such purchasers, for resale in same area and to same prospective customers and at same time, and thereby enabled some of said purchasers to buy its said books at price lower than competing purchasers were thus able to buy same books, to the injury of less favored buyers;

With the result that the effect of said discriminations in price, which did not, as appeared, come within any of the saving provisos of law involved, was substantially to lessen competition with favored purchasers and tend to create a monopoly in them, and to injure, destroy or prevent competition in sale and distribution of such books between favored purchaser recipients of such discriminatory prices and other less favored competing purchasers thereof who did not receive the same:

Held, That such discrimination in price by it constituted violation of Section 2 (a) of Clayton Act, as amended.

Mr. Frank Hier for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly described since June 19, 1936, has violated, and is now violating, the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Williams and Wilkins Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and place of business at Mount Royal and Guilford Avenues, Baltimore, Md., and has been

prior to June 19, 1936, and is now engaged in the publication, distribution, and sale of medical and other scientific books. Respondent sells and distributes said books in commerce between and among the various States of the United States and the District of Columbia, causing said books to be shipped and transported from their place of publication in Baltimore, Md., to purchasers of said books located in the various States of the United States and the District of Columbia, for use and resale within said States and the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of publishing, distributing, and selling medical and scientific books in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as above described, respondent has, since June 19, 1936, discriminated in price, and is now discriminating in price between different purchasers buying the same books for resale to retail dealers or ultimate users by giving and allowing to some of its purchasers of said books lower prices than those given or allowed other of its said purchasers competitively engaged, one with the other, in the resale of said books either to the retail book dealer or to the ultimate user within the United States. Said discriminations consist for example, in granting and allowing price discounts of 20 percent to some, 25 percent to some, 30 percent to others, and 35 percent to still other purchasers of the same books for resale in the same area to the same prospective customers. The effect of such discriminatory discounts or prices is to enable some of said purchasers to buy said books at a lower price than competing purchasers to the injury of the less favored buyer.

PAR. 4. The general effect of said discriminations in price made by said respondent, as above set out, may be substantially to lessen competition with the favored purchasers; to tend to create a monopoly in the favored purchasers; to injure, destroy, or prevent competition in the sale and distribution of said medical books between the said favored purchasers of said books receiving such discriminatory prices and other less favored competing purchasers of the same books not receiving said discriminatory prices.

PAR. 5. The foregoing alleged acts of said respondent are in violation of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

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 by the Robinson-Patman Act, approved June 19, 1936 (title 15, sec. 13), the Federal Trade Commission on July 8, 1939, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging it with violating the provisions of paragraph (a) of section 2 of the said act, as amended. After the issuance and service of said complaint respondent filed its answer admitting all of the material allegations of fact set forth in said complaint to be true and waiving all intervening procedure and further hearing as to the said facts.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer filed 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 the following findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS

Paragraph 1. That the respondent, The Williams and Wilkins Co., is a corporation under the laws of the State of Maryland with its office and place of business at Mount Royal and Guilford Avenues, Baltimore, Md., and is engaged in the publication, distribution, and sale of medical and other scientific books which said respondent ships and sells in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. That respondent in the sale and distribution of the medical and scientific books which it publishes is in substantial competition with other corporations, individuals, partnerships, and firms engaged in the publication, distribution, and sale of medical and scientific books in commerce between and among the various States of the United States and in the District of Columbia.

Par. 3. That respondent since June 19, 1936, has discriminated in price and is now discriminating in price between different purchasers buying the same books from it for resale to either retail dealers or ultimate users by giving, granting, and allowing price discounts from its established list of 20 percent to some of said purchasers of its said books, 25 percent to others, 30 percent to others, and 35 percent to still other purchasers of the same books, for resale in the same area to the same prospective customers, and at the same time

and that the effect of such discriminatory discounts or prices is to enable some of said purchasers to buy said books at a lower price than competing purchasers are able to buy the same books, which results in an injury to the less favored buyers.

PAR. 4. That the effect of said discriminations in price made by said respondent is substantially to lessen competition with the favored purchasers; to tend to create a monopoly in the favored purchasers; to injure, destroy, or prevent competition in the sale and distribution of said medical and scientific books between the favored purchasers of said books receiving such discriminatory prices and other less favored competing purchasers of the same books not receiving said discriminatory prices.

PAR. 5. That the respondent, neither in its answer nor otherwise, contends that the discriminations charged in the complaint and admitted by it in said answer, come within any of the provisos or exceptions contained in said act of Congress as amended by the Robinson-Patman Act (title 15, sec. 13).

CONCLUSION

The Commission concludes, by reason of the facts and circumstances found and stated in the foregoing findings of fact, that the respondent, The Williams and Wilkins Co., has discriminated in price in violation of paragraph (a) of said section 2 of said Clayton Act as amended by the Robinson-Patman 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 by the respondent, The Williams and Wilkins Co., admitting all the material allegations of fact in the complaint to be true and waiving all intervening procedure and further hearing as to the said facts 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 for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936 (title 15, sec. 13);

It is ordered, That respondent, The Williams and Wilkins Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of medical and scientific books in interstate commerce for resale,

do forthwith cease and desist from discriminating in price directly or indirectly by varying discounts between competing purchasers for resale of said books as found in paragraph 3 of the aforesaid findings as to the facts and conclusion, or from directly or indirectly in any other manner discriminating in price between competing purchasers for resale of respondent's medical and scientific books by granting or allowing differing discounts thereon, the effect whereof may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged or to injure, destroy, or prevent competition with any customer receiving the benefit of such discrimination, except where such discount makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such medical and scientific books are to such purchasers sold.

It is further ordered, That the said respondent, The Williams and Wilkins Co., 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

SAMUEL I. SIFERS, INDIVIDUALLY AND TRADING AS SIFERS 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 3311. Complaint, Jan. 25, 1938—Decision, Aug. 24, 1939

Where an individual engaged in manufacture and sale of candy to wholesalers in various other States—

Furnished with certain types of candies made by him various push cards and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said candies to members of consuming public wholly by lot or chance, and were used by said wholesalers' or retailers' customers for resale of said products to purchasing public, in accordance therewith, and which included (1) box of candy consisting of 40 pieces, together with 1 of said cards for use in sale and distribution of said candy, in accordance with said card's explanatory legend, pursuant to which customer paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, depending upon number concealed by disk selected and received, as described by card, high quality, full value, 5-cent candy bar, (2) assortments, together with 150 disk cards for use in sale and distribution thereof in accordance with said cards' explanatory legends, pursuant to which those securing for their penny paid, certain 1 of 20 numbers received 5-cent candy bars, and those securing other numbers received penny pieces, and person making last purchase received 4 bars, and (3) 30 disk cards, in 2 sections, for use in sale and distribution of candy under a plan and in accordance with said card's explanatory legend, pursuant to which selectors of each of 6 of the disks received for the 5 cents paid two 5-cent candy bars, selectors of last disk in each of 2 sections into which card was divided received 1 large-size candy bar, and others received 1 bar of ordinary size; and

Supplied thereby to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries were conducted by retailer purchasers of said candy for resale to consuming public through use of said cards as above described, involving game of chance or sale of a chance in resale and distribution of his said candy, contrary to the established public policy of the United States Government, and in violation of the laws of several of the States, and in competition with those who are unwilling to employ in sale and distribution of candies any method or sales plan which involves games of chance, gift enterprises, or lottery schemes, and refrain therefrom;

With the result that such competitors were placed at a disadvantage in competing, many purchasers of candies manufactured and sold by him were attracted by element of chance involved in sale and distribution of said candies by use of said push cards furnished by him, and were thereby induced to purchase his candies in preference to similar products offered and sold by competitors who do not furnish with their candy similar push cards or other devices, and with result by reason of such preference that wholesale dealers and jobbers purchased substantial amounts of candies made

and sold by said individual and trade was diverted unfairly to him from competitors aforesaid:

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

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

Mr. D. C. Daniel and *Mr. William L. Pencke* for the Commission.

Apt & Enfield, of Iola, 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 Samuel I. Sifers, individually, and trading as Sifers Candy Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent Samuel I. Sifers is an individual doing business under the trade name of Sifers Candy Co., with his principal office and place of business located at Iola, Kans. He 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 dealers and jobbers. Respondent causes and has caused his products when sold to be transported from his principal place of business in Iola, Kans., to purchasers thereof in the State of Kansas and in other States of the United States 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 respondent in such candy between and among the various States of the United States. In the course and conduct of his said business respondent is in competition with other individuals and with partnerships 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.

Par. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has 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. One of said assortments is sold and distributed to the consuming public in the following manner:

This assortment consists of a number of small bars of candy of uniform size and shape and a number of large bars of candy, together

with a device commonly called a "push card." The card contains a number of partially perforated disks, which are arranged in two sections. When a disk is pushed or separated from the 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. Sales are 5 cents each. The card bears statements or legends informing prospective purchasers as to which numbers entitle the purchasers thereof to receive two of the small bars of candy. The purchaser of the last push in each section is entitled to and receives one of the large bars of candy. All numbers other than those specified entitle the purchasers thereof to receive one of the small bars of candy. Two of the small bars of candy are worth more than 5 cents, but the purchaser who obtains one of the specified numbers receives the two bars for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the particular push separated from the card. A number of the small bars of candy are thus distributed to the purchasers of pushes from the card wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, 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 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 candy in preference to candy and similar products offered for sale and sold by his 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 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 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 an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery. Many persons, firms, and corporations who make and sell candy or similar products in competition with the respondent, as above alleged, are unwilling to offer for sale or to 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, 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 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 the 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 respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair 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 25, 1938, issued its complaint and caused same to be served on the respondent, Samuel I. Sifers, individually and trading as Sifers Candy 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 having filed no answer thereto), testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, an attorney for the Commission, before William C. Reeves, an examiner for the Commission theretofore duly designated by it, which testimony was reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence received as exhibits. No testimony or other evidence was introduced by or on behalf of said respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence and the brief in support of the complaint. No brief was filed by or on behalf of respondent and oral argument was waived by him, 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. For more than 3 years the respondent, Samual I. Sifers, has carried on business at Iola, Kans., under the name and style of Sifers Candy Co. He has been engaged in the business of the manufacture and sale of candy; his entire output has been sold to wholesale dealers located in the States of Kansas, Nebraska, Iowa, Missouri, Arkansas, Texas, and Oklahoma. The volume of business done by respondent has been about $125,000 per year. Respondent has caused the candy manufactured by him when sold to be transported from his place of business in Iola in the State of Kansas, through and into or into other States of the United States, and in the course and conduct of his said business respondent has been, and is now, in active competition with various partnerships and corporations and other persons also engaged in the manufacture and sale, or the sale, of candy in commerce among several of the States of the United States.

PAR. 2. Respondent, in the course of his business as described in paragraph 1 hereof, in soliciting the sale of and in selling certain types of candies manufactured by him, has furnished with such candies various devices, sometimes described as push cards and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which such candies were to be distributed to members of the consuming public wholly by lot or chance. One of the devices so furnished by respondent was intended for use

by retail dealers in the sale of a box of candy consisting of 40 pieces. Printed on each of the cards was a statement to the effect that the card contained no blanks; that each customer paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, depending upon the number concealed by the disk selected by him, and that each customer received a high quality, full value, 5-cent candy bar. Each of the cards had stamped thereon 40 disks, each of which concealed a number and customers were to be solicited to select 1 or more of the disks and to pay a number of cents corresponding with the number concealed by each of the disks selected. Another card furnished by respondent with other assortments of candies sold by him had stamped thereon 150 disks, each of which concealed a number. There was printed on each of these cards a statement to the effect that it contained no blanks; that selectors of the disk paid 1 cent for each of the disks selected; that selectors of disks which concealed 20 of the numbers each received a 5-cent candy bar and selectors of the other numbers each received a 1-cent piece of candy except that the person to whom the last sale was made received 4 candy bars. Another card so furnished by respondent had stamped thereon 30 disks divided into 2 sections, each of which disks concealed a number. Selectors of the disks were required to pay 5 cents for each disk selected and selectors of each of 6 of the disks receive two 5-cent candy bars and selectors of the last disk in each of the sections each received 1 large size bar of candy and each of the others received 1 candy bar of ordinary size. Respondent has sold a substantial quantity of candy with which he furnished such devices and the Commission finds that the candy so sold was distributed to the purchasing public wholly by lot or chance and that by use of 1 of the devices so sold by respondent the amount which each customer was required to pay also was determined wholly by lot or chance.

PAR. 3. The Commission finds that candy sold by respondent to wholesale dealers and jobbers, with which he furnished push cards as set out in paragraph 2 hereof, was resold by such wholesale dealers and jobbers to retail dealers, who resold such candy to the consuming public by the use of such push cards, in the manner and by the sales plan described in said paragraph 2. That respondent, by furnishing such push cards with the candy sold by him thereby supplied to and placed in the hands of others the means by which games of chance, gift enterprises, and lotteries have been conducted. The Commission further finds that the use of such push cards in the resale and distribution of the candy manufactured and sold by respondent, involved a game of chance or the sale of a chance and that the use of such methods in the sale and distribution of candies or other merchandise is a practice of the sort which is contrary to

the established public policy of the Government of the United States and is in violation of the laws of several of the States of the United States.

PAR. 4. There are among the competitors of respondent, persons, partnerships, and corporations engaged in the manufacture and sale, or the sale, of candies in commerce between and among the various States of the United States, which competitors are unwilling to employ in the sale and distribution of candies any method or sales plan which involves games of chance, gift enterprises, or lottery schemes, and refrain from such practice, and as a result are placed at a disadvantage in competition. Many purchasers of candies manufactured and sold by respondent were attracted by the element of chance involved in the sale and distribution of such candies by the use of push cards furnished by respondent and were thereby induced to purchase the candies sold by respondent in preference to similar candies offered for sale and sold by competitors of respondent who did not furnish with candy sold by them similar push cards or other devices, and because of this preference wholesale dealers and jobbers have purchased a substantial amount of candies manufactured and sold by respondent with the result that trade has been diverted unfairly to respondent from said competitors.

CONCLUSION

The acts and practices of respondent, as herein before found, are all to the injury and prejudice of the public and of competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 (respondent having filed no 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 (respondent having offered no testimony or other evidence in opposition to the allegations of said complaint), brief of counsel for the Commission filed herein (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel I. Sifers, individually and trading as Sifers Candy Co., his representatives, agents, and

employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any other merchandise so packed and assembled that sales of said candy 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 dealers assortments of candy together with push or pull cards, punchboards or other lottery devices which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

3. Supplying to or placing in the hands of dealers push or pull cards, punchboards or other lottery devices either with assortments of candy or other merchandise or separately which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

4. Selling or otherwise disposing of said candy or any other merchandise by use of push or pull cards or other lottery devices.

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

SUMLAK COMPANY

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

Docket 3828. Complaint, June 21, 1939—Decision, Aug. 24, 1939

Where a corporation engaged in sale and distribution of medicinal preparation known as "Sumlakia" for use, as recommended by it, by those suffering from epilepsy; in advertisements which it disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce among the various States, and through other means, and which were intended and calculated to induce, directly or indirectly, purchase of said preparation—

(*a*) Represented that said "Sumlakia" was a cure or remedy for epilepsy, and a competent treatment therefor, and harmless and safe for use, facts being it was not such a cure, remedy, or treatment, nor harmless nor safe for use by those suffering from epilepsy, by reason of the various bromides contained therein, and long continued or excessive use of such bromides might cause injury to health, such as mental dullness and deterioration, psychoses, skin eruptions, digestive disturbances, or loss of sexual power; and

(*b*) Failed, in its said advertisements disseminated as above set forth, to reveal to purchasers and prospective purchasers that use of said preparation by uninformed persons under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might in some cases cause them to suffer serious injury to health;

With effect of engendering in the minds of substantial portion of purchasing public erroneous and mistaken belief that said statements and representations were true and that said preparation might be used under conditions prescribed in said advertisements, or under customary or usual conditions, without danger to user, and to induce portion of said public, because of such belief, to purchase its said drug-containing medicinal preparation;

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. W. Branch for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Sumlak Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Sumlak Co. is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 226–228 East Sixth Street, in the city of Cincinnati, State of Ohio. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation known as Sumlakia, recommended for use by those suffering from epilepsy. In the course and conduct of its business respondent causes said medicinal preparation when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said medicinal preparation sold and distributed by it in commerce between and among the various States in the United States and in the District of Columbia.

PAR. 2. In the course of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning its said medicinal preparation by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination, of various advertisements concerning its said medicinal preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Sumlakia for Epilepsy. The first bottle of Sumlakia means checking the spells. Must fully satisfy—or costs you nothing—we sell it with manufacturer's money back guarantee.

Sumlakia's functional goal is to aid nature in soothing the affected organs so that the shock of the oncoming attack can be cushioned and averted.

Equally important as its therapeutic qualities is the comforting assurance that Sumlakia is made out of non-narcotic ingredients. It is safe. If it does not help, it should, at least, not harm, not even an aged person or an infant.

We are glad to tell you of one case of a person afflicted with epilepsy to whom we recommended Sumlakia, the wife of the sufferer, reporting later, said: That he had not had any ailments since taking the medicine and is happy with results.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's products, respondent has represented and does now represent, directly and indirectly, that its preparation, Sumlakia, is a cure or remedy for epilepsy and a competent treatment therefor, and that said preparation is harmless and safe for use.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as herein above described are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's preparation, Sumlakia, is not a cure or remedy for epilepsy, nor is it a competent treatment therefor. Furthermore, said preparation is not harmless and safe for use by those suffering from epilepsy, because of the fact the said preparation is composed of the following bromides: Potassium, strontium, sodium, and ammonium, and the long continued or excessive use of such bromides may cause injury to health such as mental dullness and deterioration, psychosis, skin eruptions, digestive disturbances, and loss of sexual power.

PAR. 5. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparation by uninformed persons under the conditions prescribed in said advertisements or under such conditions as are customary or usual may in some cases cause them to suffer serious injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said medicinal preparation, 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 and mistaken belief that such false statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparation containing drugs.

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 21, 1939, issued and served

its complaint in this proceeding upon said respondent, Sumlak Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 17, 1939, the Commission entered its order extending the time for the filing of the answer to said complaint from July 12, 1939, to August 11, 1939. Prior to August 11, 1939, respondent entered into a stipulation whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and Richard P. Whiteley, Acting 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 (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 and stipulation, said stipulation having been approved, accepted, and filed, 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 Sumlak Co. is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 226–228 East Sixth Street, in the city of Cincinnati, State of Ohio. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation known as Sumlakia, which it recommends for use by those suffering from epilepsy. In the course and conduct of its business respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation sold and distributed by it, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Each teaspoonful of Sumlakia contains, among other things:

6 grains of potassium bromide
3 grains of strontium bromide
3 grains of sodium bromide
3 grains of ammonium bromide

PAR. 3. In the course of its aforesaid business respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said medicinal preparation by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, various advertisements concerning its said medicinal preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Sumlakia for Epilepsy. The first bottle of Sumlakia means checking the spells. Must fully satisfy—or costs you nothing—we sell it with manufacturer's money-back guarantee.

Sumlakia's functional goal is to aid nature in soothing the affected organs so that the shock of the oncoming attack can be cushioned and averted.

Equally as important as its therapeutic qualities is the comforting assurance that Sumlakia is made of non-narcotic ingredients. It is safe. If it does not help, it should, at least, not harm, not even an aged person or an infant.

We are glad to tell you of one case of a person afflicted with epilepsy to whom we recommended Sumlakia, the wife of the sufferer reporting later said: That he had not had any ailments since taking the medicine and is happy with results.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, respondent has represented and does now represent, directly and indirectly, that its preparation,

Sumlakia, is a cure or remedy for epilepsy and a competent treatment therefor, and that said preparation is harmless and safe for use.

PAR. 6. The representations made by respondent, directly and by implication, and used and disseminated by respondent in the manner described with respect to its said preparation, are exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, respondent's preparation, Sumlakia, is not a cure or remedy or competent treatment for epilepsy. It is not harmless and safe for use by those suffering from epilepsy because of the fact that it contains the various bromides set forth in paragraph 2 hereof, and the long continued or excessive use of such bromides may cause injury to health, such as mental dullness and deterioration, psychoses, skin eruptions, digestive disturbances or loss of sexual power.

The said advertisements are further false in that in them respondent fails and has failed to reveal to purchasers and prospective purchasers that the use of said preparation by uninformed persons under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may in some cases cause them to suffer serious injury to health.

PAR. 7. The use by respondent of the foregoing exaggerated, misleading, and untrue statements, representations and advertisements disseminated as aforesaid, with respect to the said medicinal preparation and respondent's failure to reveal the consequences which may result from its use, as aforesaid, have had and now have the capacity and tendency to and do engender in the minds of a substantial portion of the purchasing public the erroneous and mistaken belief that the said statements and representations are true and that said preparation may be used under conditions prescribed in said advertisements, or under customary or usual conditions, without danger to the user and to induce a portion of the purchasing public, because of such belief, to purchase respondent's medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, Sumlak Co., a corporation, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and a stipulation as to the facts entered into between the respondent herein and Richard P.

Whiteley, Acting 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, Sumlak Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated, any advertisement by means of the United States mails, or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a certain medicinal preparation now designated by the name "Sumlakia," or any other preparations or preparations composed of substantially similar ingredients, or possessing substantially similar therapeutic qualities, whether sold under said name or any other name or names, or disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act of said preparation, which advertisements represent, directly or through implication that said preparation is a cure or remedy, or a competent treatment, for epilepsy; or that said preparation is harmless or safe for use; or which advertisements fail to reveal that the long continued or excessive use of said preparation may cause serious injury to the health of the user.

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

SAKS & COMPANY, DOING BUSINESS AS SAKS AT 34TH STREET

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

Docket 3298. Complaint, Jan. 12, 1938—Decision, Aug. 25, 1939

Where a corporation engaged in operating retail department stores in New York City, and in there dealing in numerous articles of merchandise, including perfumes and toilet waters, both at its said store in regular course of retail trade, and on mail order from customers in other States; in advertising perfumes in newspapers of general circulation in New York and adjacent States—

(*a*) Described as "Renaud's Perfume, Famous in France" product there offered, notwithstanding fact perfume advertised by it had been purchased from dealers in said city and had been there made from concentrates imported from France, and to which alcohol and water had been added in city and State aforesaid, and which concentrates, preceding such processes and addition, were not finished products and marketable as perfumes, and product thus described was not famous in France nor even there generally well known;

With tendency and capacity to cause members of purchasing public to have erroneous and mistaken belief that perfume thus designated was imported from France and to purchase same because of such belief; and

(*b*) Represented its said "Renaud's Perfume, Famous in France" as priced at $3.95, and at about one-fifth of its value, listed at $22.50, and perfume offered in 1-ounce flacons, priced at $1 each, as "Perfume by Riviere, regularly $5.00," facts being its former $3.95 product had never been listed or sold by it in its store at $22.50, and other product had never been listed or sold therein at $5;

With capacity and tendency to confuse, mislead, and deceive members of public and induce them to purchase perfumes offered and sold by it in the belief that such products were being sold at prices much below their true values and list prices, and had been imported from France, and with result that trade in commerce was diverted unfairly to it from its competitors who do not misrepresent the values or list prices of perfumes offered and sold by them and do not offer perfumes of domestic manufacture as and for those imported from France:

Held, That such claims and representations, as above set forth, were all to the injury of the public and constituted unfair methods of competition in commerce.

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

Mr. William L. Pencke for the Commission.

Chadbourne, Wallace, Parke & Whiteside, 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 Saks & Co., a corporation, trading and doing business under the firm name and style of Saks at 34th Street, 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. Saks & Co., hereinafter referred to as 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 at 1293 Broadway, in the city and State of New York. Respondent is a wholly owned subsidiary of Gimbel Bros., Inc., a corporation, and operates a retail store under the firm name and style of Saks at 34th Street, situated at Broadway and Thirty-fourth Street, in the city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing perfumes, toilet waters, and related articles of cosmetics. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, causing said products when sold to be shipped from its place of business in the State of New York to purchasers thereof located in various States other than the State of New York. There is now and has been at all times hereinafter mentioned a course of trade and commerce in said purfumes, toilet waters, and kindred cosmetic articles so sold and distributed by the respondent between and among the various States of the United States and 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, partnerships, and firms likewise engaged in the business of selling and distributing perfumes, toilet waters, and kindred cosmetic articles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale and in the selling of its said products and for the purpose of creating a demand on the part of the consuming public for said products, has advertised said products

through the media of price lists, newspapers advertisements, and other printed matter published, issued, and circulated among its 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 said respondent makes and has made false and misleading statements to the general public with reference to the said products offered for sale by it.

PAR. 5. The said advertisements and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions, and misrepresentations concerning its products, of which the following advertisements are examples:

Perfume by RIVIERE * * *
regularly 5.00
1.00

Only because of a very special purchase can we sell this exquisite perfume at a price so far below its value. The quantity is distinctly limited, so regular Riviere 'fans' will get their orders in early! It comes in a one-oz. flacon, beautifully packaged in a suede box. The odeurs: Gardenia, Sweet Pea and Orchid.

STREET FLOOR

* * * * * * *

Perfume by
RIVIERE * * *
1.00

Three fresh floral perfumes by a man who understands the important influence a perfume can have. The Sweet Pea is naive, the Gardenia subtle, the Orchid exotic. Each comes in a lovely flacon that reposes in a gift box.

Street Floor

* * * * * * *

Famous in France
RENAUD'S Perfume
3.95

This fine perfume, famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value! The gift bottle, of simulated quartz, is done in excellent taste. Your choice of Sweet Pea, Orchid or Gardenia.

* * * * * * *

Sale—Perfume by Morin
Regularly 10.00 value—2.00
full two ounces.

The aforesaid statements and descriptions appearing in said advertisements and otherwise serve as representations to members of the purchasing public that the said products so described and referred

to have regular retail values and selling prices greatly in excess of the purported special sale prices set-out in said advertisements; that said products are generally and customarily sold at retail for approximately the prices described and referred to as being the regular retail value or prices thereof; and that Renaud's perfume so advertised is not of domestic origin, but is of French origin and is made in France and subsequently imported into the United States.

PAR. 6. In truth and in fact, said products have not been and are not customarily sold at retail prices higher than those advertised and represented as being special sale prices, and said products have never been sold at approximately the prices represented as being the regular and customary retail sales prices thereof. The Riviere perfumes have not customarly been sold at retail for $5 an ounce or for any sum substantially approximating that amount. Morin perfumes have never been sold at $10 for a 2-ounce flacon or for any sum substantially approximating that amount. In truth and in fact, said perfumes are customarily and generally sold at retail at the prices which are stated and represented to be special sales prices and have never been customarily sold at retail for prices in excess of those prices. The perfume designated as Renaud's is actually manufactured in the United States and is not imported from France.

PAR. 7. The public generally understands the custom of marking or otherwise designating the actual customary retail price or value of various commodities and has been led to, and does, place its confidence in such price marking or designation and the representations thereby made as to the quality and value of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 8. For many years a substantial portion 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, over any perfumes of domestic manufacture.

PAR. 9. There are among the competitors of respondent distributors and dealers in like or similar products who truthfully advertise the quality, merit, nature, and origin of their respective products, and do not represent in any way that said products are of foreign origin when they are in fact of domestic origin, and do not misrepresent the quality, value, or price of said products by representing said products to have a customary and regular retail sales price which is greatly in excess of the purported special sales price, which is in fact the regular price for said product.

PAR. 10. The aforesaid misleading representations and practices of the respondent in selling and offering for sale the above-described perfumes have had, and have, a tendency and capacity to, and do, mislead a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs that Renaud's perfume is made or compounded in France and imported into the United States and is not a domestic perfume, and that all of said perfumes have customary and regular prices greatly in excess of the purported special sales prices set-out in the advertisements, and that the consuming public in purchasing said perfumes at the purported special sales prices obtains the benefit of a substantial reduction in prices from the ordinary and customary selling prices of said perfumes.

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 products to buy the products so offered for sale, sold, and distributed by the respondent on account of the aforementioned mistaken and erroneous beliefs. As a result thereof, trade has been diverted to respondent from those of respondent's competitors engaged in similar businesses who truthfully advertise their said products. 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. 11. The aforementioned methods, acts, and practices of respondent are all to the 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, 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 January 12, 1938, issued its complaint in this proceeding and caused same to be served upon the respondent, Saks & Co., a corporation, trading and doing business under the firm name and style of Saks at 34th Street, with principal place of business at 611 Fifth Avenue in the city and State of New York, 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 an answer thereto by said respondent, testimony and other evidence in support of the allegations of said com-

plaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Chadbourne, Wallace, Parke & Whiteside, attorneys for the respondent, before William C. Reeves, an examiner for the Commission theretofore duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the 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 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, Saks & Co., is a corporation organized, existing, and carrying on business under the laws of the State of New York, with principal place of business at 611 Fifth Avenue, in the city and State of New York. It is a wholly owned subsidiary of Gimbel Bros., Inc., another corporation organized under the laws of the State of New York. Said respondent operates a retail department store under the name and style of Saks at 34th Street, which store is located at Broadway and Thirty-fourth Street in the city and State of New York. For more than 2 years said respondent has offered for sale and sold at its said store numerous articles of merchandise including perfumes and toilet waters. The greater portion of the business of respondent consists of sales of merchandise at its said store in the regular course of retail trade, but it also makes a substantial volume of sales of some articles of merchandise, including perfumes, on mail orders from customers located in States of the United States other than the State of New York, and respondent has caused the merchandise so sold to be transported from its store in the State of New York through and into or into other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of perfumes, toilet waters, and similar articles of merchandise in commerce among several of the States of the United States.

PAR. 2. Respondent, in the course of its business as set out in paragraph 1 hereof, has caused advertisements to be published in news-

papers of general circulation in the State of New York and States adjacent thereto, in which advertisements a 3-ounce bottle of perfume described as "Renaud's Perfume, Famous in France" was priced at $3.95 and was represented in said advertisements to be about one-fifth of its value and was listed at $22.50. Other advertisements which respondent caused to be published related to 1-ounce flacons of perfume priced at $1 each, which were described at "Perfume by Riviere, regularly $5.00." The item priced at $3.95 in such advertisements had never been listed or sold by respondent in its store at $22.50 as stated in the advertisements and the item priced at $1 in said advertisements had never been listed or sold by respondent in its store at $5. The perfume so advertised by respondent had been purchased by respondent from dealers in New York City, State of New York, and had been made in said city and State from concentrates imported from France, to which concentrates alcohol and water had been added in said city and State. The concentrates from which such perfumes were made were not finished products and were not marketable as perfumes until alcohol had been added.

PAR. 3. Users of perfumes in the United States prefer imported perfumes to domestic perfumes. The designation by the respondent in the aforesaid advertisements of said perfume as "Renaud's Perfume, Famous in France" has the tendency and capacity to cause members of the purchasing public to have the erroneous and mistaken belief that said perfume was imported from France and to purchase said perfume because of said erroneous and mistaken belief. The perfume advertised by respondent as "Renaud's Perfume, Famous in France," is not famous in France as represented in the advertisements which respondent caused to be published, as set out in paragraph 2 hereof, and is not even generally well known in France.

PAR. 4. The claims and representations made by respondent in the advertisements which it caused to be published, as set out in paragraph 2 hereof, concerning the values and list prices and place of manufacture of perfumes offered for sale and sold by it, are false, misleading, and deceptive, and have and have had the capacity and tendency to confuse, mislead, and deceive members of the public and to induce them to purchase the perfumes offered for sale and sold by respondent in the belief that such perfumes were being sold at prices much below their true values and list prices and had been imported from France, and as a result trade in interstate commerce has been diverted unfairly to respondent from its competitiors who do not misrepresent the values or list prices of perfumes offered

for sale and sold by them, and who do not offer perfumes of domestic manufacture for sale as and for perfumes which had been imported from France.

CONCLUSION

The claims and representations made by respondent concerning perfumes offered for sale and sold by it, as hereinbefore set out, are all to the injury of the public and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Saks & Co., a corporation, trading under its own corporate name and also trading and doing business under the firm name and style of Saks at 34th Street, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes and other toilet preparations in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Famous in France," or of any other terms, words, symbols, or picturizations, indicative of French or other foreign origin of such products, or in any manner, that perfumes or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied with a statement that such products are made or compounded in the United States.

2. Using the term "Renaud's Perfume—Famous in France," or any other terms indicative of French origin, or any French or other foreign words or terms, as brand or trade names for perfumes, or other toilet preparations, made or compounded in the United States without clearly and conspicuously stating in immediate connection

therewith that such products are made or compounded in the United States.

3. Representing by any specified sum or in any other manner that the ordinary retail price or prices of said products are other than the price or prices at which said products are ordinarily 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 in which it has complied with this order.

IN THE MATTER OF

ALLE-RHUME REMEDY COMPANY, INC. AND BLOCK DRUG COMPANY, INC.

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

Docket 3678. Complaint, Dec. 28, 1938—Decision, Aug. 25, 1939

Where two corporations, under common control and directed by same set of officers, respectively engaged as manufacturer and as exclusive distributor, in compounding, selling, and distributing their "Allenru" medical or pharmaceutical preparation to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of medical and other preparations and products designed and intended for use in treatment of ailments and conditions for which they recommended their said product, and including many who do not in any manner misrepresent their preparations and do not make any other false statements in connection with sale and distribution thereof; in advertisements which they disseminated through the mails and through newspapers and periodicals of general circulation, and through circulars and printed matter distributed in commerce among the various States, and through various means, and which were intended and calculated to induce, directly or indirectly, purchase of their said product—

(*a*) Represented, directly or by implication, that said "Allenru" would drive out of or rid joints or muscles of all uric acid deposits, and that excess uric acid caused or aggravated most cases of rheumatism, and that it would cause uric acid poisons to be eliminated from body in 24 hours, facts being it would not drive out of joints and muscles all uric acid deposits that cause suffering, or drive out uric acid poisoning from body in 24 hours, and excess uric acid in system does not cause or aggravate most cases of rheumatism;

(*b*) Represented, as aforesaid, that said preparation was compounded from a safe or scientific formula, and was free from harmful drugs and constituted a remedy or cure for rheumatism, sciatica, neuritis, lumbago, and neuralgia, facts being it was not a safe, sensible, scientific formula free from harmful or pain-deadening drugs, nor competent and effective remedy or treatment or cure for said or any other ailments or conditions which may be present in or afflict the body, and had no substantial therapeutic value in treatment thereof; and

(*c*) Represented, as aforesaid, that use of said "Allenru" would remove cause of, or effect quick relief from, sciatica, neuritis, or lumbago, and would quickly stop distress and pain of said ailments caused by excess uric acid or other circulating poisons, and would stop the pain, agony, and inflammation within 48 hours, facts being it would not accomplish such results, and most of aches and pains and stiffness, soreness, and lameness of rheumatism, sciatica, neuritis, and rheumatic gout are not caused or aggravated by such excess uric acid and other circulating poisons, and it would not drive out pain and agony caused by said ailments within 48 hours or in any other period of time, and their claims as to therapeutic value or

efficacy of their said product were grossly exaggerated, false, and deceptive, and clearly exceeded claims as to therapeutic value or efficacy thereof which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public, through their said false, deceptive, and misleading statements, representations, and advertisements, into the erroneous and mistaken belief that such false statements, etc., were true, and that their said preparation possessed properties claimed and represented and would accomplish results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of their said drug-containing preparation, and of thereby diverting trade unfairly to them from their competitors in commerce who truthfully advertise the effectiveness of their respective preparations and 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 in commerce and unfair and deceptive acts and practices therein.

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

Mr. J. D. Kash for the Commission.

Mr. Charles W. Green, of New York City, for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Alle-Rhume Remedy Co., Inc., and Block Drug Co., Inc., hereinafter referred to as respondents, have violated the provisions of the 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:

Parargapii 1. Alle-Rhume Remedy Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in Jersey City, State of New Jersey. Respondent Block Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in Jersey City, State of New Jersey. The respondent, Alle-Rhume Remedy Co., Inc., manufactures the product hereinafter mentioned and respondent, Block Drug Co., Inc., acts as exclusive distributor of said product. The respondent, Block Drug Co., Inc., owns and controls a considerable portion of the common stock of the respondent, Alle-Rhume Remedy Co., Inc. The affairs of both respondent corporations are controlled and directed by the same set of officers. Said respondents have cooperated each with

the other and have acted in concert in doing the acts and things hereinafter alleged.

PAR. 2. The respondents are now and have been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated as Allenru. Respondents sell said preparation to members of the purchasing public situated in various States of the United States and cause said preparation when sold by them to be transported from their aforesaid place of business in the State of New Jersey to the purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing medical and other preparations and products designed and intended for use in the treatment of ailments and conditions of the human body for which respondents recommend the use of their said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have and do now cause to be disseminated, false advertisements for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' said medical preparation. Said false advertisements were and are disseminated by use of the United States mails and by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States. Various means have been, and are, used by respondents to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondents' said medical preparation. Among and typical of the

statements and representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

URIC ACID POISONING STARTS TO LEAVE BODY IN 24 HOURS

Out of your body and muscles go the uric acid deposits that cause all your suffering—It is a safe, sensible, scientific formula free from harmful or pain deadening drugs. The same absolute guarantee holds good for sciatica, neuritis and lumbago—Quick, joyful relief—No more idle days—It removes the cause.

Now, there is a prescription called Allenru that is safe, yet so powerful that when you take it uric acid poisons start to pour out of your body in 24 hours. Better still, in 48 hours pain, agony, and inflammation are gone. You are ready for work again.

Excess uric acid causes or aggravates most rheumatism.

Allenru is a prescription compounded to swiftly stop the distress, the pain, the agony of rheumatism and sciatica caused by excess uric acid or other circulating poisons.

Most of the aches, pains, stiffness, soreness and lameness of stubborn rheumatism, sciatica, neuritis, and rheumatic gout are caused or aggravated by excess uric acid or other circulating poisons.

One supremely good prescription for rheumatism, sciatica, neuritis and lumbago when caused or aggravated by excess uric acid or other circulating poisons, and most of it is well and favorably known to live pharmacists all over America. Just ask for 8 ounces of Allenru prescription and take as directed. It is swift and safe. Often the pain and agony leaves in 48 hours. Cost about 85¢.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set-out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented directly and by implication, among other things, that the use of the preparation Allenru will drive out uric acid deposits from joints and muscles of the users thereof; that said preparation is a safe, sensible, scientific formula free from harmful or pain-deadening drugs; that their product is guaranteed to remove the cause of sciatica, neuritis, and lumbago; that its use will cause uric-acid poisons to be eliminated from the body in 24 hours and that pain, agony, and inflammation will leave the body within 48 hours; that excess uric acid in the body causes or aggravates most rheumatism; that said product will swiftly stop the distress, pain, and agony of rheumatism, neuritis, and sciatica when caused by excess uric acid or other circulating poisons in the body; that most of the aches, pains, stiffness, soreness, and lameness of rheumatism, sciatica, and rheumatic gout are caused and aggravated by excess uric acid and other circulating poisons; that said prescription is swift and safe and that pain and agony caused by rheumatism, sciatica, neuritis, and lumbago,

when caused or aggravated by excess uric acid or other circulating poisons, will leave the body within 48 hours.

PAR. 6. The aforesaid representations, used and disseminated by respondents in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact respondents' preparation Allenru does not drive out of joints and muscles all uric-acid deposits that cause suffering. It is not a safe, sensible, scientific formula free from harmful or pain-deadening drugs. It does not relieve sciatica, neuritis, and lumbago, nor does it effect a quick relief for such ailments, nor does it remove the cause of same. Respondents' preparation does not drive out uric-acid poisoning from the body in 24 hours, nor does it stop the pain, agony, and inflammation within 48 hours. Excess uric acid in the system does not cause or aggravate most rheumatism. Allenru will not swiftly stop the distress, pain, and agony of rheumatism, neuritis, and sciatica caused by excess uric acid or other circulating poisons. Most of the aches, pains, stiffness, soreness, and lameness of rheumatism, sciatica, neuritis, rheumatic gout, are not caused or aggravated by excess uric acid and other circulating poisons.

The use of said preparation will not cure nor has it any substantial therapeutic value in the treatment of rheumatism. Said preparation is not a competent and effective remedy or treatment for, nor will it cure or be of substantial therapeutic value in the treatment of sciatica, neuritis, lumbago, or neuralgia, or any other ailment, disease or condition which may be present in, or afflict the human body, and it will not drive out the pain and agony caused by such ailments within 48 hours or in any other period of time.

Respondents' claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive, and clearly exceed claims as to the therapeutic value or efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondents of the foregoing false and deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondents' said preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchas-

ing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said preparation.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products, as described in paragraph 3. In consequence 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. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 28, 1938, issued, and on December 29, 1938, served, its complaint in this proceeding, charging respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 said complaint and substitute answer, and the Commission, having 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. Alle-Rhume Remedy Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in Jersey City, State of New Jersey. Respondent Block Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in Jersey City, State of New Jersey. The respondent Alle-

Rhume Remedy Co., Inc., manufactures the product hereinafter mentioned and respondent Block Drug Co., Inc. acts as exclusive distributor of said product. The respondent, Block Drug Co., Inc. owns and controls a considerable portion of the common stock of the respondent Alle-Rhume Remedy Co., Inc. The affairs of both respondent corporations are controlled and directed by the same set of officers. Said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter found to have been done.

PAR. 2. The respondents are now and have been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated as Allenru. Respondents sell said preparation to members of the purchasing public situated in various States of the United States and cause said preparation when sold by them to be transported from their aforesaid place of business in the State of New Jersey to the purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing medical and other preparations and products designed and intended for use in the treatment of ailments and conditions of the human body for which respondents recommend the use of their said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have and do now cause to be disseminated, false advertisements for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' said medical preparation. Said false advertisements were and are disseminated by use of the United States mails and by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States. Various means have been,

and are, used by respondents to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondents' said medical preparation. Among and typical of the statements and representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

URIC ACID POISONING STARTS TO LEAVE BODY IN 24 HOURS

Out of your body and muscles go the uric acid deposits that cause all your suffering—It is a safe, sensible, scientific formula free from harmful or pain deadening drugs. The same absolute guarantee holds good for sciatica, neuritis and lumbago—Quick, joyful relief—No more idle days—It removes the cause.

Now, there is a prescription called Allenru that is safe, yet so powerful that when you take it uric acid poisons start to pour out of your body in 24 hours. Better still, in 48 hours pain, agony, and inflammation are gone. You are ready for work again.

Excess uric acid causes or aggravates most rheumatism.

Allenru is a prescription compounded to swiftly stop the distress, the pain, the agony of rheumatism and sciatica caused by excess uric acid or other circulating poisons.

Most of the aches, pains, stiffness, soreness, and lameness of stubborn rheumatism, sciatica, neuritis, and rheumatic gout are caused or aggravated by excess uric acid or other circulating poisons.

One supremely good prescription for rheumatism, sciatica, neuritis and lumbago when caused or aggravated by excess uric acid or other circulating poisons, and most of it is well and favorably known to live pharmacists all over America. Just ask for 8 ounces of Allenru prescription and take as directed. It is swift and safe. Often the pain and agony leaves in 48 hours. Cost about 85 cents.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set-out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented directly and by implication, among other things, that the use of the preparation Allenru will drive out uric-acid deposits from joints and muscles of the users thereof; that said preparation is a safe, sensible, scientific formula free from harmful or pain-deadening drugs; that their product is guaranteed to remove the cause of sciatica, neuritis, and lumbago; that its use will cause uric-acid poisons to be eliminated from the body in 24 hours and that pain, agony, and inflammation will leave the body within 48 hours; that excess uric acid in the body causes or aggravates most rheumatism; that said product will swiftly stop the distress, pain, and agony of rheumatism, neuritis, and sciatica when caused by

excess uric acid or other circulating poisons in the body; that most of the aches, pains, stiffness, soreness, and lameness of rheumatism, sciatica, and rheumatic gout are caused and aggravated by excess uric acid and other circulating poisons; that said prescription is swift and safe and that pain and agony caused by rheumatism, sciatica, neuritis, and lumbago, when caused or aggravated by excess uric acid or other circulating poisons, will leave the body within 48 hours.

PAR. 6. The aforesaid representations, used and disseminated by respondents in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact respondents' preparation Allenru does not drive out of joints and muscles all uric-acid deposits that cause suffering. It is not a safe, sensible, scientific formula free from harmful or pain-deadening drugs. It does not relieve sciatica, neuritis, and lumbago, nor does it effect a quick relief for such ailments, nor does it remove the cause of same. Respondents' preparation does not drive out uric-acid poisoning from the body in 24 hours, nor does it stop the pain, agony, and inflammation within 48 hours. Excess uric acid in the system does not cause or aggravate most rheumatism. Allenru will not swiftly stop the distress, pain and agony of rheumatism, neuritis, and sciatica caused by excess uric-acid or other circulating poisons. Most of the aches, pains, stiffness, soreness, and lameness of rheumatism, sciatica, neuritis, rheumatic gout, are not caused or aggravated by excess uric acid and other circulating poisons.

The use of said preparation will not cure nor has it any substantial therapeutic value in the treatment of rheumatism. Said preparation is not a competent and effective remedy or treatment for, nor will it cure or be of substantial therapeutic value in the treatment of sciatica, neuritis, lumbago, or neuralgia, or any other ailment, disease, or condition which may be present in, or afflict the human body, and it will not drive out the pain and agony caused by such ailments within 48 hours or in any other period of time.

Respondents' claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive, and clearly exceed claims as to the therapeutic value or efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false and deceptive and misleading statements, representations, and advertise-

ments disseminated as aforesaid with respect to said preparation 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondents' said preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said preparation.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce, who truthfully advertise the effectiveness in use of their respective preparations and products, as described in paragraph 3. In consequence 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.

CONCLUSION

The aforesaid acts and practices of the respondents, Alle-Rhume Remedy Co., Inc. and Block Drug Co., Inc., are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admitted all of the material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to said facts, and the Commission, having, on the 25th day of August 1939, made its findings as to the facts and conclusion that respondents had violated the provisions of the Federal Trade Commission Act, and the Commission having, on the 25th day of August 1939, issued its order to cease and desist against said respondents, and said respondents having thereafter requested that said order to cease and desist be modified, and the Commission having duly considered said request, and the record herein, and being now fully advised in the premises, makes this its modified order to cease and desist.

[1] Order published as modified as of November 13, 1939.

It is ordered, That the respondents, Alle-Rhume Remedy Co., Inc., a corporation, and Block Drug Co., Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of their medicinal preparation now designated by the name "Allenru," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties whether sold under said name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or by implication, that said preparation will drive out of or rid joints or muscles of all uric-acid deposits; or that excess uric acid causes or aggravates most cases of rheumatism; or that said preparation is compounded from a safe or scientific formula, or is free from harmful drugs; or that said preparation is a remedy or cure for, or has any substantial therapeutic value in the treatment of, rheumatism, sciatica, neuritis, lumbago, or neuralgia; or that the use of said preparation will remove the cause of, or effect a quick relief from, sciatica, neuritis, or lumbago; or that said preparation will quickly stop the distress and pain of rheumatism, neuritis or sciatica caused by excess uric acid or other circulating poisons.

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

MELVIN B. SELCER, MARY F. SELCER, CLAY SPENCER AND CHARLOTTE SPENCER, INDIVIDUALLY AND AS COPARTNERS, TRADING AS SPENCER BUSINESS COLLEGE, AND RAY AXTON

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

Docket 3694. Complaint, Jan. 25, 1939—Decision, Aug. 25, 1939

Where four partners engaged in sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects and, chiefly, as thus engaged, in conducting correspondence courses in said subjects, and the employee of their "Extension Division," who directed operation of sales representatives, agents, and employees engaged in selling and undertaking to sell their said courses of instruction to be taken by correspondence;

In selling, as aforesaid, through their said sales representatives, agents, or employees, their said correspondence courses, including, under designation "Complete Secretarial" course, instruction in shorthand, typewriting, business English, business correspondence and secretarial duties, and, under designation "Business Administration course," bookkeeping, typewriting, business English and correspondence, and salesmanship and business administration—

(*a*) Represented that prospect solicited had been especially selected by them for an offer of enrollment in their courses, and that their said sales representatives, agents or employees, or "registrars," had special authority to sell meritorious persons such offers, and that student or prospective student thus especially selected was offered an especially low price for advertising purposes, consisting only of cost of materials, with tuition to be given free, and that regular price for regular course was higher than said exceptionally low price, facts being prospect solicited had not been especially selected, their said representatives, etc., did not approach such persons by virtue of any especial authority as above claimed, prospect was not offered especially low price consisting only of cost of materials, and tuition for regular price of regular course was not in excess of price offered;

(*b*) Represented that such selected prospects were recipients of scholarships, and that enrollment under such scholarship entitled student to the full course of instruction, and that number of scholarships available to any given locality, city, community or State was limited, facts being no scholarships were awarded, enrollment under such alleged special offer did not entitle student to any full course of instruction in excess of that ordinarily procurable, and number of enrollments available to any given locality was not limited; and

(*c*) Represented that they maintained branch offices in numerous cities other than that of New Orleans, in which the business and school aforesaid described were located, facts being they maintained no branches elsewhere;

With tendency and capacity to mislead and deceive substantial number of persons into erroneous and mistaken belief that such false and misleading representations were true, and into purchasing their said course in and on account of such belief, and with result that trade was thereby diverted unfairly to them from their competitors who do not make similar misrepresentations in connection with the sale of their courses:

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

Before *Mr. William B. Lott*, trial examiner.

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Porteous, Johnson & Humphrey, of New Orleans, La., for respondents.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer, individually, and as copartners, trading as Spencer Business College and Ray Axton, an individual, hereinafter referred to as respondents, have violated the provisions of the 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, Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer are copartners trading as Spencer Business College and maintain their principal office and place of business at 310 Carondelet Street, in the city of New Orleans, State of Louisiana. Respondent, Ray Axton, is an agent and employee of said copartnership and at all times dominates, manages, and controls that certain department of respondents' business known as the "Extension Division," and maintains his principal office and place of business at the same address, 310 Carondelet Street, in the city of New Orleans, State of Louisiana.

Respondents now are and for many years last past have been engaged in the sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects. The business chiefly operated by respondents is that commonly known as a correspondence school consisting of the sale and delivery by mail and by other means of transportation of the

[1] Published as amended by order of August 16, 1939.

courses of instruction as aforesaid to subscribers or purchasers thereof located in States other than the State of Louisiana. The Extension Division of which respondent, Ray Axton, is manager, as aforesaid, directs the operation of all sales' representatives, agents, and employees of respondents engaged in selling and undertaking to sell courses of instruction to be taken by correspondence. Pursuant to the sale of such courses of instruction respondents ship or transport or cause to be shipped or transported from their place of business in the city of New Orleans, State of Louisiana, the printed and mimeographed matter, examination questions, charts, information, and general literature and paraphernalia comprising the said course or courses of instruction to the purchasers of the same located in States other than the State of Louisiana.

PAR. 2. In the course and conduct of their said business respondents are in substantial competition with other copartnerships and with individuals and corporations engaged in the sale and delivery by mail or in other manner, of courses of instruction to subscribers or purchasers thereof located throughout the various States of the United States.

PAR. 3. A substantial number of the purchasers or subscribers of said courses of instruction so vended by respondents are secured through sales representatives, agents, and employees designated by respondents as "Registrars," who personally solicit members of the general purchasing public throughout the various States of the United States for the purpose of selling the courses of instruction as aforesaid.

PAR. 4. The said sales representatives, agents, or employees in endeavoring to effect sales in the courses aforesaid, make to prospective purchasers thereof various representations among and typical of which are the following:

That the prospect so solicited has been especially selected by respondents for an offer of enrollment in their courses.

That the sales representatives, agents, or employees by them designated as "Registrars" have special authority to sell meritorious persons their offers of enrollment.

That students or prospective students of the school so especially selected are offered an especially low price for advertising purposes; that such especially low price consists of only the cost of the materials and that tuition will be given free to said prospects if they become enrolled as students; that the regular price for the regular course offered said prospects is higher than said exceptionally low price.

That such selected prospects are recipients of "scholarships."

That enrollment under such "scholarship" entitles the student to the "full course" of instruction.

That the number of scholarships available to any given locality, city, community or state is limited.

That respondents maintain branch offices in numerous other cities other than the city of New Orleans.

PAR. 5. Among the courses of instruction offered for sale by the respondents aforesaid are courses in shorthand, typewriting, business English, business correspondence, and secretarial duties designated as a "Complete Secretarial" course. Another of the courses so sold and offered for sale and designated as a "Business Administration" course consists of bookkeeping, typewriting, business English, business correspondence, salesmanship, and business administration.

PAR. 6. The representations as stated in paragraphs 3, 4, and 5 hereof are grossly exaggerated, misleading, false and deceptive in that the prospect so solicited has not been especially selected by respondents; the sales representatives, agents and employees of respondents do not approach such persons by virtue of any special authority to sell to meritorious persons; prospective students so approached are not offered an especially low price which consists only of the cost of materials, and tuition and the regular price for the regular course is not in excess of that so offered; no scholarships are awarded and the enrollment under the alleged special offer does not entitle the student to any "full course" of instruction in excess of that ordinarily procurable; the number of enrollments available to any given locality is not limited; nor do the respondents maintain branch offices in cities other than the city of New Orleans.

PAR. 7. There are among the competitors of respondents, as aforesaid, those who do not make or cause to be made false and misleading statements and representations concerning the nature, terms, and general conditions of enrollment, or of purchase of or subscription for courses of instruction; nor do such competitors falsely represent that they maintain branch offices when in fact they do not.

PAR. 8. The use by the respondents of the false and misleading representations hereinabove set forth has the tendency and capacity to mislead and deceive a substantial number of persons into purchasing said courses of instruction in and on account of said erroneous beliefs. As a result thereof trade has been diverted unfairly to respondents from their competitors who do not make similar misrepresentations in connection with the sale of their courses of instruction. In consequence thereof 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.

PAR. 9. 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 25, 1939, issued, and on January 28, 1939, served its complaint in this proceeding upon respondents, Melvin S. Selcer, Mary F. Selcer, Clay Spencer, Charlotte Spencer, and Ray Axton charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. A stipulation was entered into herein between W. T. Kelley, chief counsel for the Commission, and Julian B. Humphrey, attorney for respondents, wherein it was stipulated that paragraph 6 of the complaint issued by the Commission on January 25, 1939, be amended so as to correct a clerical error appearing therein and that the aforesaid substitute answer of respondents be deemed an answer to the complaint as thus amended, which stipulation was approved by the Commission; and the Commission, by order entered herein, so amended said complaint and directed that the aforesaid substitute answer of respondents, dated May 18, 1939, be made an answer to the complaint as thus amended. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint as amended 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. Respondents, Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer, are copartners trading as

Spencer Business College and maintain their principal office and place of business at 310 Carondelet Street, in the city of New Orleans, State of Louisiana. Respondent Ray Axton is an agent and employee of said copartnership and at all times dominates, manages and controls that certain department of respondents' business known as the "Extension Division," and maintains his principal office and place of business at the same address, 310 Carondelet Street, in the city of New Orleans, State of Louisiana.

Respondents are now, and for many years last past have been, engaged in the sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects. The business chiefly operated by respondents is that commonly known as a correspondence school, consisting of the sale and delivery by mail and by other means of transportation of the courses of instructions as aforesaid to subscribers or purchasers thereof located in States other than the State of Louisiana and in the District of Columbia. The Extension Division of which respondent Ray Axton is manager, as aforesaid, directs the operation of all sales representatives, agents and employees of respondents engaged in selling and undertaking to sell courses of instruction to be taken by correspondence. Pursuant to the sale of such courses of instruction, respondents ship or transport or cause to be shipped or transported from their place of business in the State of Louisiana, the printed and mimeographed matter, examination questions, charts, information and general literature and paraphernalia comprising the said course or courses of instruction to purchasers of the same located in states other than the State of Louisiana and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are in substantial competition with other copartnerships and with individuals and corporations engaged in the sale and delivery by mail or in other manner, of courses of instruction to subscribers or purchasers thereof located throughout the various States of the United States and in the District of Columbia.

PAR. 3. A substantial number of the purchasers or subscribers of said courses of instruction so vended by respondents are secured through sales representatives, agents and employees designated as "registrars," who personally solicit members of the general purchasing public throughout the various States of the United States for the purpose of selling the courses of instruction as aforesaid.

PAR. 4. The said sales representatives, agents or employees in endeavoring to effect sales in the aforesaid courses make the prospective purchasers thereof various misrepresentations, among and typical of which are the following:

That the prospect so solicited has been especially selected by respondents for an offer of enrollment in their courses.

That the sales representatives, agents or employees by them designated as "Registrars" have special authority to sell meritorious persons their offers of enrollment.

That students or prospective students of the school so especially selected are offered an especially low price for advertising purposes; that such especially low price consists of only the cost of the materials and that tuition will be given free to said prospects if they become enrolled as students; that the regular price for the regular course offered said prospects is higher than said exceptionally low price.

That such selected prospects are recipients of "scholarships".

That enrollment under such "scholarship" entitles the student to the "full course" of instruction.

That the number of "scholarships" available to any given locality, city, community or state is limited.

That respondents maintain branch offices in numerous cities other than the city of New Orleans.

PAR. 5. Among the courses of instruction offered for sale by the respondent aforesaid are courses in shorthand, typewriting, business English, business correspondence, and secretarial duties designated as "Complete Secretarial" course. Another of the courses so sold and offered for sale and designated as a "Business Administration" course consists of bookkeeping, typewriting, business English, business correspondence, salesmanship, and business administration.

PAR. 6. The Commission finds that the representations made by the respondents as stated in paragraphs 3, 4 and 5 hereof are grossly exaggerated, misleading, false and deceptive in that the prospect so solicited has not been especially selected by respondents; the sales representatives, agents and employees of respondents do not approach such persons by virtue of any special authority to sell to meritorious persons; prospective students so approached are not offered an especially low price which consists only of the cost of materials, and tuition for the regular price of the regular course is not in excess of that so offered; no scholarships are awarded and the enrollment under the alleged special offer does not entitle the student to any "full course" in instruction in excess of that ordinarily procurable; the number of enrollments available to any given locality is not limited; nor do the respondents maintain branch offices in cities other than the city of New Orleans.

PAR. 7. There are among the competitors of respondents as aforesaid, those who do not make or cause to be made false and misleading statements and representations concerning the nature, terms and

general conditions of enrollment or of purchase of or subscription for course of instruction; nor do such competitors falsely represent that they maintain branch offices when in fact they do not.

PAR. 8. The use by the respondents of the false and misleading representations hereinabove set forth has the tendency and capacity to mislead and deceive a substantial number of persons into the erroneous and mistaken belief that the aforesaid false and misleading representations are true and into purchasing said courses of instruction in and on account of said erroneous belief. As a result thereof, trade has been diverted unfairly to respondents from their competitors who do not make similar misrepresentations in connection with the sale of their courses of instruction.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, as amended, of the Commission, stipulation entered into between W. T. Kelley, chief counsel for the Commission and Julian B. Humphrey, attorney for respondents, and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer, individually and as copartners trading as Spencer Business College, or under any other name or names, and respondent Ray Axton, an individual, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of correspondence courses in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents offer for sale correspondence courses at a discount price unless such price is substantially lower

than the price at which such courses are ordinarily offered for sale and sold by respondents.

2. Using the term "scholarship" or any other term or terms of similar import or meaning to designate, describe or in any way refer to an offer or a correspondence course whereby the recipient is required to pay therefor substantially the same price as the price for which such courses are ordinarily sold by respondents.

3. Misrepresenting that any specified sum is the actual cost of "materials" of correspondence courses, or otherwise misrepresenting the actual cost of the materials thereof.

4. Representing that correspondence courses are being, or will be, sold only to a limited or selected number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sale, or the extent to which the sale of said correspondence courses is limited.

5. Representing that respondents maintain a branch office or offices in any city or locality wherein respondents do not in fact maintain a branch office or offices.

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.

IN THE MATTER OF

SIMMONS COMPANY

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 3840. Complaint, June 30, 1939—Decision, Aug. 25, 1939

Where a corporation which (1) was engaged on Nation-wide scale in manufacture, sale, and distribution of standardized and nationally advertised products, such as metal beds, bed springs, studio couches, gliders and mattresses, (2) had, in addition to its principal manufacturing plant in the State of Wisconsin, 8 other manufacturing plants in various States across the country, and maintained and operated approximately 55 warehouses situated in as many cities in over 30 States, and maintained and operated service stations and sales headquarters in each of the cities in which its warehouses were located, for convenience in sale and delivery of its merchandise, and (3) employed some three hundred salesmen who called regularly on the retail trade, and derived approximately 90 percent of its income from sales in the United States, ranging, during the years concerned, from some $24,000,000 to $31,000,000, and which, as aforesaid engaged, sold and distributed its said products to customers selling at retail in competition with each other locally and, to a lesser extent, nationally, and in competition in such resale with retailer customers of its competitors, who distributed, in case of few, their products nationally, as did it, but, in case of most, to customers located within 250 or 300 miles of their manufacturing plants;

In selling its said standardized product under its "Plan" and schedule, under which customer purchasing in year amount aggregating from $50,000 to $75,000 became entitled to discount of 3 percent on *entire amount* purchased, customer thus purchasing amount aggregating from $75,000 to $100,000 became thus entitled to discount of 4 percent under schedule first employed and 3½ percent under later schedule, and under which, through five additional steps in former schedule, customer became entitled to successively increased discounts similarly retroactively applicable and ranging from 5 percent on amount aggregating from $100,000 to $200,000, up to 7 percent on amount equalling or exceeding $500,000, and under which, in later schedule, customer became entitled to similar retroactive discounts of 4 percent on amount ranging from $100,000 to $150,000, 4½ percent on amount ranging from $150,000 to $200,000, and 5 percent on amount equalling or exceeding latter figure—

(*a*) Discriminated in price against competing individual customers purchasing less than $50,000 a year through granting, allowing and paying to the few individual customers who qualified therefor under said schedules by purchasing required amount of $50,000 or over, discounts due thereunder on such customers' year's purchasing; and

Where said corporation which, for purpose of granting and paying aforementioned discounts, treated as single customer various types of organizations, including the "individual customer" who was individual, partner-

ship or corporation owning one and only one retail store, and "central organizations" comprised of (1) individual, partnership or corporation owning two or more unincorporated retail store units, (2) corporation owning substantially or completely issued and outstanding stock of number of separately incorporated retail stores, (3) corporation, stock of which, as aforesaid, was owned by other corporation which, in turn, owned such stock of number of such separately incorporated stores, and (4) various other similarly constituted organizations—

(*b*) Discriminated in price against individual customers in competition with one or more of the unit stores of one or more of such "central organizations," through granting, allowing and paying discounts as aforesaid to such organizations, purchase of which organizations' individual retail stores or units, as made by or for them from said corporation, were often no larger, and frequently smaller, than quantities of merchandise purchased during same period by many "individual customers" who did not qualify for and did not in fact receive such discounts, and were serviced in substantially same manner as were said "central organization's" retail stores or units, and were, often, in direct competition;

With result that manufacturers in competition with said corporation could not obtain a part of the business of a "central organization" receiving discounts even by offering equal price, but were compelled to offer sufficiently lower price to compensate such organization for loss of discount on that portion of its requirements which it had already purchased, or which it might be compelled to purchase, from said corporation; and

With result that effect of discriminations in price in favor of "central organizations" and other large buyers might be substantially to lessen competition with, and tend to create a monopoly in, said corporation in line of commerce in which it was engaged; and

Where said corporation which, for purpose of granting and paying aforementioned discounts, treated as single customer "syndicate heads" made up of various types of organizations, and including (1) independent individual, partnership, or corporation which acted or was authorized to act as buying agent for number of otherwise independent and unrelated individual customers or for number of such customers and one or more central organizations, (2) corporation, stock of which was owned substantially or entirely by number of otherwise independent and unrelated individual customers, and which acted or was customarily authorized to act as buying agent therefor, (3) cooperative corporation of which number of otherwise independent and unrelated individual customers were members, and which acted or was customarily authorized to act as buying agent therefor, and (4) loosely knit association of otherwise independent and unrelated individual customers, or number of such customers and one or more central organizations, and which might or might not act or be authorized to act as buying agent of members, and (5) various other similarly constituted organizations—

(*c*) Discriminated in price against nonmember or nonaffiliated individual customers who were in competition with one or more of the individual customers, or one or more unit stores, or one or more of the central organizations, which were members of or affiliated with one or more of said "syndicate heads," through granting, allowing and paying discounts, either directly or indirectly, to individual customers and central organizations which were such members or thus affiliated, by payment, in first

instance, to appropriate "syndicate heads," of such discounts as aggregate purchases of members or affiliates might secure under such schedules, for proportionate payment over to such members or affiliates, purchases of which from said corporation, as respected individual customers or unit stores of central organizations receiving such discounts by reason of their said membership or affiliation, were often no larger than, and often smaller than, quantities of merchandise purchased during same period by many individual customers who did not qualify for and receive such discounts, and who were serviced in substantially same manner as were others and were, in many instances, in direct competition with one or more of member or affiliated individual customers or unit stores of said central organization; and

(*d*) Discriminated in price, insofar as it granted, allowed and paid higher or greater discount, either directly or indirectly, to individual customer or central organization which was syndicate member or affiliate than it paid to competing individual customer or central organization which was member or affiliate of other syndicate, to the advantage and favor of former and disadvantage of latter;

With result that adoption of said "Plan" encouraged some of otherwise independent and unrelated individual customers of said corporation and central organizations purchasing from it to become affiliated with syndicate heads already in existence, and caused creation by others of said customers and organizations of other buying syndicates and similar groups, and with result that many competitors of it unsuccessfully sought to sell their former and other potential customers who had "gone syndicate," and effect of discriminatory treatment in favor of individual customers and central organizations which constituted or were allied with syndicate heads might be substantially to lessen competition with and tend to create a monopoly in it in the line of commerce in which it was engaged; and

With effect that its said "Plan," either alone or in combination with its practice aforesaid of treating central organizations and syndicate heads as one customer for purpose of computing and paying discounts thereunder, operated to produce, among others and as typical of many thereof, situations in which—

(1) Individual customer purchasing over $50,000 worth of its merchandise a year and receiving 3 percent discount thereon might be in competition in same city with customer purchasing less than said amount and receiving no discount, but with considerably larger average purchases and deliveries than those of discount receiving customer;

(2) Fifteen thousand dollar individual customer purchaser with no discount might be local competitor of $5,000 unit store purchaser receiving 3 to 5 percent discount on its purchases by virtue of aggregate purchases of or for all the units of its central organization, notwithstanding deliveries by corporation to unit store in same way as to individual customer, and with average size deliveries to latter frequently larger than to former, and with same service by its salesmen in both cases, and not infrequently same procedure in taking orders, invoicing, etc.;

(3) Ten thousand dollar individual customer purchaser with no discount might be local competitor of other individual, thousand dollar customer purchaser receiving from 3 to 5 percent discount as member of or allied with syndicate head, with facts with respect to service, solicitation of orders, delivery, etc., involving no distinction in the one case over the other, and

with average size deliveries to unaffiliated customer frequently larger than those to others;

(4) Ten thousand dollar individual customer purchaser receiving 3 percent discount as member of or affiliate with syndicate head, aggregate purchases of which fall in the $50,000 to $75,000 group, might be in local competition with thousand dollar individual customer purchaser receiving 5 percent discount as member of or affiliated with syndicate head, aggregate purchases of which exceed $200,000, with salesmen's service, solicitation of orders, and delivery of merchandise, invoicing of bills, etc., without distinction in case of either, except that average size of deliveries to larger purchaser getting smaller discount is apt to be larger than that of smaller purchaser with larger discount; and

(5) Two individual customers of it, in competition with one another and purchasing exactly same quantity of its products of like grade and quality during any year, might pay aggregate prices therefor varying almost as much as $2,500; and

With result that advantage to its customers who purchased at the lower prices under said practices and price differentials, as above set forth, with respect to central organizations and syndicate heads, and which made other than due allowance in cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said corporation's products were sold or delivered by it to its customers as aforesaid, might be reflected not only in price cutting, but also in increase in service, sales effort, sales appeal and in other ways that injure or tend to lessen competition with them, to the disadvantage of the customers against whom such discriminations were employed; and

With result that effect of discriminations in price made by it as above set forth might be—

(1) Substantially to lessen competition between it and its competitors aforesaid, and between its retailer customers in whose favor such discriminations were made and its other retailer customers, and between retailer customers of its competitors who did not grant them the benefit of such discriminatory prices and the retailer customers who purchased of said corporation, and in favor of whom it discriminated; and

(2) Tend to create a monopoly in it in the line of commerce involved, and to injure, destroy or prevent competition with it and competition with retail customers of it who received benefit of such discrimination:

Held, That said corporation discriminated in price between different purchasers of its products of like grade and quality as above set forth, and violated subsection (a) of section 2 of Clayton Act, as amended.

Mr. S. G. Churchill and *Mr. J. W. Carter, Jr.* for the Commission.
Cumings & Lockwood, of Stamford, Conn., for respondent.

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," commonly known as the Clayton Act, (U. S. C. title 15, sec. 13), as amended by an act of Congress, approved June 19, 1936, commonly

known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the respondent Simmons Co. (hereinafter referred to as "Simmons") since June 19, 1936, has been and now is violating the provisions of subsection (a) of section 2 of said act as amended, issues its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Simmons is a corporation organized and existing under the laws of the State of Delaware and has its principal executive office and place of business at 230 Park Avenue, New York City, N. Y.

PAR. 2. For many years prior to and since June 19, 1936, Simmons has been and now is engaged in the business of manufacturing, selling and distributing metal beds, bedsprings, studio couches, gliders, mattresses, and miscellaneous allied products. That, except for certain lines manufactured on special order, constituting approximately 6 percent of its total United States business, its products are all standardized. In the course and conduct of its business Simmons has been and now is manufacturing said products at its principal manufacturing plant, which is located at 551 Fifth Avenue, Kenosha, Wis., and at its eight other manufacturing plants, which are located at Watertown, Mass.; Elizabeth, N. J.; Atlanta, Ga.; Kansas City, Kans.; Dallas, Tex.; Seattle, Wash.; San Francisco, Calif., and Los Angeles, Calif. That Simmons maintains and operates approximately 55 warehouses situated in as many cities in over 30 States of the United States. That Simmons, for convenience in selling and delivering its merchandise, maintains and operates service stations and sales headquarters in each of the cities in which its warehouses are located. Simmons employs approximately 300 salesmen who call regularly on the retail trade. Simmons' total net sales in the United States amounted, in the year 1936, to approximately $28,000,000; in the year 1937, to approximately $31,000,000; in the year 1938, to approximately $24,500,000; and approximately 97 percent of its income from sales made in the United States is derived from sales to dealers who sell at retail.

PAR. 3. In the course and conduct of its business as aforesaid, Simmons transports or causes to be transported some of said products, when manufactured, from its plants aforesaid to its warehouses which are located, as hereinbefore set forth, in various States of the United States, and oftentimes in States other than the States in which its plants are located and in which such shipments originated, and transports or causes to be transported its said products from its plants aforesaid or from its warehouses aforesaid to the purchasers thereof located in the several States of the United States

and in the District of Columbia, other than the States in which its said plants are located, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between Simmons' plants, warehouses, and distributing points and purchasers located in all of the States of the United States and the District of Columbia.

Simmons advertises many of its products nationally, particularly its highest quality merchandise, such as its "Beautyrest" mattresses and springs, and has created a public demand for such products throughout the States of the United States, the District of Columbia, and elsewhere.

Simmons' plan for the marketing of its products is designed to and does in fact enable it to sell and distribute its products to dealers located in every State of the United States and the District of Columbia. The business of Simmons is an integrated whole and is national in scope.

Simmons sells and distributes the aforesaid products for use, consumption or resale within the United States and in the District of Columbia, in the same States and places as and in competition with various other manufacturers of beds, bedding and miscellaneous allied products. A few of said competing manufacturers distribute their products nationally, as does Simmons, but most of said competing manufacturers distribute their products to customers located within 250 or 300 miles of their manufacturing plants.

Simmons' customers who sell at retail are competitively engaged with each other locally, and to a lesser extent, nationally, and with the retailer customers of Simmons' competitors, in the resale of said products, said resales taking place in every State of the United States and in the District of Columbia.

PAR. 4. Simmons, in the course and conduct of its business in commerce as hereinbefore set forth has, since June 19, 1936, discriminated in the prices at which it has sold and is now discriminating in the prices at which it is selling its products of like grade and quality between different retailer purchasers of such products by giving and allowing to some of said retailer purchasers, either directly or indirectly, rebates or discounts from its published prices not given and allowed to others of Simmons' said retailer purchasers.

PAR. 5. That the discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by Simmons in its pricing plan of a sliding scale of discounts based upon the quantities purchased in any one year by any one customer (hereinafter sometimes referred to as the "Simmons Plan"). The plan, briefly stated, as operative for the years prior to January 1, 1938, was as follows:

To any customer who purchased less than $50,000 worth of merchandise in any one calendar year, no discount was granted (except a 2 percent discount for cash). To any customer who purchased merchandise in any one year to an aggregate of $50,000 or more, the following scale of discounts applied:

$50,000 to $75,000	3 percent
$75,000 to $100,000	4 percent
$100,000 to $200,000	5 percent
$200,000 to $300,000	5½ percent
$300,000 to $400,000	6 percent
$400,000 to $500,000	6½ percent
$500,000 and over	7 percent

Aggregate purchases of a customer during a calendar year not only determined the rate of discount, but the discount rate thus determined was retroactively applied to all purchases made during the year, even to those in the no-discount zone, so that if a customer bought $500,000 worth of merchandise in any one calendar year, he got the 7 percent discount on the first $50,000 worth of his purchases as well as on the remaining $450,000 thereof.

The discounts were computed and paid in cash by Simmons shortly after the end of each calendar year.

The Simmons Plan operates and is the same today as aforesaid, except that the schedule of discounts now in effect (effective as of January 1, 1938) is as follows:

$50,000 to $75,000	3 percent
$75,000 to $100,000	3½ percent
$100,000 to $150,000	4 percent
$150,000 to $200,000	4½ percent
$200,000 and more	5 percent

PAR. 6. That, for the purpose of granting and paying the aforementioned discounts, Simmons has at all times hereinbefore mentioned treated and now treats each of the following types of organizations as a single customer:

1. An individual, partnership, or corporation owning one and only one retail store (hereinafter referred to as an "individual customer").

2. An individual, partnership, or corporation owning more than one retail store, the individual retail stores or individual units not being incorporated (hereinafter sometimes referred to as a "central organization").

3. A corporation owning all or substantially all of the issued and outstanding equity stock of a number of separately incorporated retail stores (hereinafter sometimes referred to as a "central organization").

4. A corporation, all or substantially all of the issued and outstanding equity stock of which is owned by another corporation, which, in turn, owns all or substantially all of the issued and outstanding equity stock of a number of separately incorporated retail stores (hereinafter sometimes referred to as a "central organization").

5. Divers other organizations constituted similarly to the organizations set forth and described briefly in subdivisions (2), (3), and (4) of this paragraph 6 (hereinafter sometimes referred to as "central organizations").

That the discounts hereinbefore mentioned are paid in cash by Simmons to each individual customer, as hereinbefore defined, who qualifies therefor by purchasing the requisite amount of merchandise. That there are few such individual customers of Simmons in the entire United States who qualify for and receive such discounts. That in granting, allowing and paying such discounts to individual customers who purchase $50,000 worth or more of Simmons' merchandise in any one year, Simmons has discriminated in price against competing individual customers who purchase less than $50,000 worth of Simmons' merchandise in such period.

That the discounts hereinbefore mentioned are paid in cash by Simmons to each of such central organizations, as hereinbefore defined, which qualify therefor by purchasing the requisite amount of merchandise, pursuant to oral understandings between Simmons and each of such central organizations to the effect that the aggregate purchases of the individual stores or units constituting each such central organization shall be used in determining the rate and the amount of the discounts payable to each such central organization.

That the quantities of merchandise purchased each year from Simmons by or for each of the individual retail stores or units constituting the central organizations which receive the aforementioned discounts are oftentimes no larger than, and oftentimes smaller than, the quantities of merchandise purchased during the same period by many individual customers who do not qualify for, and do not, in fact, receive said discounts, and the individual retail stores or units constituting the herein mentioned central organizations are serviced in substantially the same manner by Simmons as are the individual customers herein mentioned. That, in many instances, the individual customers mentioned herein are in direct competition with one or more of the unit stores of one or more of the central organizations mentioned herein. That in granting, allowing and paying discounts to the central organizations herein mentioned, Simmons has discriminated in price against individual customers herein mentioned who are

in competition with one or more of the unit stores of one or more of such central organizations.

That manufacturers in competition with Simmons cannot obtain a part of the business of a central organization receiving the discounts even by offering an equal price, but must offer a sufficiently lower price to compensate said central organization for the loss of the discount on that portion of its requirements which it has already purchased or which it may be compelled to purchase from Simmons. That the effect of the discriminations in price in favor of central organizations and other large buyers may be substantially to lessen competition with and tend to create a monopoly in Simmons in the line of commerce in which it is engaged.

PAR. 7. That, for the purpose of granting and paying the aforementioned discounts, Simmons has at all times hereinbefore mentioned treated and now treats each of the following types of organizations as a single customer:

1. An independent individual, partnership or corporation that acts or which is authorized to act, whether it in fact does so or not, as the buying agent for a number of otherwise independent and unrelated individual customers or for a number of such customers and one or more central organizations (hereinafter sometimes referred to as a "syndicate head").

2. A corporation all or substantially all of the issued and outstanding equity stock of which is owned by a number of otherwise independent and unrelated individual customers and which acts or which is customarily authorized to act, whether it in fact does so or not as the buying agent of said customers (hereinafter sometimes referred to as a "syndicate head").

3. A cooperative corporation of which a number of otherwise independent and unrelated individual customers are members, and which acts or which is customarily authorized to act, whether it in fact does so or not, as the buying agent of said customers (hereinafter sometimes referred to as a "syndicate head").

4. A loosely-knit association of otherwise independent and unrelated individual customers or of a number of such customers and one or more central organizations, which may or may not act, or which may or may not be authorized to act, as the buying agent of the members thereof (hereinafter sometimes referred to as a "syndicate head").

5. Divers other organizations constituted similarly to the organizations set forth and described briefly in this paragraph 7.

That the discounts hereinbefore mentioned are paid in the first instance in cash by Simmons to each of such syndicate heads, as here-

inbefore defined, as qualified therefor by reason of member purchases, pursuant to oral understandings betwen Simmons and each of such syndicate heads to the effect that the aggregate purchases of the individual customers and central organizations, if any, constituting or allied with each such syndicate head shall be used in determining the rate and the amount of the discounts payable in the first instance to each such syndicate head.

That each such syndicate head receiving the discounts pays over, either directly or indirectly, the total discounts initially received by it, or substantially all thereof, to the individual customers and central organizations, if any, of which it is comprised or which are allied with it, said payment bearing the same ratio to the total discounts received by the syndicate head as the total purchases of the individual customer or central organization receiving it bear to the total purchases of all the individual customers and central organizations comprising or allied with said syndicate head. That the syndicate head is in every case the agent of the individual customers and central organizations, constituting or allied with it, for the purpose of receiving and passing on to such customers and organizations the discounts aforementioned.

That the quantities of merchandise purchased each year from Simmons by each of the individual customers or by each of the unit stores of the central organizations which receive the aforementioned discounts by reason of membership in or affiliation with a syndicate head, are oftentimes no larger than and oftentimes smaller than, the quantities of merchandise purchased during the same period by many individual customers who do not qualify for and do not, in fact, receive said discounts, and the individual customers and the unit stores of the central organizations comprising or allied with the hereinmentioned syndicate heads are serviced in substantially the same manner by Simmons as are the individual customers who do not qualify for and do not in fact, receive said discount. That, in many instances, the individual customers who do not receive the discounts are in direct competition with one or more of the individual customers or one or more of the unit stores of one or more of the central organizations which are members of or allied with one or more of the syndicate heads mentioned herein.

That in granting, allowing and paying discounts, either directly or indirectly, to individual customers and to central organizations which are members of or affiliated with a syndicate head, Simmons has discriminated in price against nonmember or nonaffiliated individual customers who are in competition with one or more of the individual customers or one or more of the unit stores of one or more of the

central organizations which are members of or allied with one or more of the syndicate heads mentioned herein. That in granting, allowing and paying a higher or greater discount, either directly or indirectly, to an individual customer or to a central organization which is a member of or affiliated with one syndicate head than to a competing individual customer or central organization which is a member of or affiliated with another syndicate head, Simmons has discriminated in price in favor of the former.

That the adoption of the Simmons Plan has encouraged some of the otherwise independent and unrelated individual customers of Simmons and central organizations purchasing from Simmons to become affiliated with syndicate heads already in existence and has caused the creation by others of said customers and organizations of other buying syndicates and similar groups. Many competitors of Simmons have unsuccessfully sought to sell their former and other potential customers who have "gone syndicate." The effect of the discriminatory treatment in favor of individual customers and central organizations which constitute or are allied with syndicate heads, as alleged in this Paragraph Seven, may be substantially to lessen competition with and tend to create a monopoly in Simmons in the line of commerce in which it is engaged.

PAR. 8. The amount of the rebates or discounts paid by Simmons, during the year 1936, amounted to more than $500,000; to approximately $750,000 during the year 1937 and to over $485,000 during the year 1938.

PAR. 9. The effect of such discriminations in price made by Simmons, as set forth in paragraphs 4 to 7, inclusive, hereof, may be substantially to lessen competition between Simmons and its aforesaid competitors; between the retailer customers of Simmons in whose favor such discriminations are made and Simmons' other retailer customers; between the retailer customers of Simmons' competitors who do not grant such customers the benefit of such discriminatory prices and the retailer customers who purchase of Simmons in favor of whom Simmons discriminates; tend to create a monopoly in Simmons in the aforesaid line of commerce; to injure, destroy, or prevent competition with Simmons; to injure, destroy, or prevent competition with retailer customers of Simmons who receive the benefit of such discrimination.

Such discriminations in price by Simmons between different retailer purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid, are in violation of the provisions of subsection (a) of Section 2 of the Act described in the preamble hereof.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," (the Clayton Act), as amended, the Federal Trade Commission, on June 30, 1939, issued its complaint against the respondent Simmons Co. (hereinafter referred to as "Simmons") and caused such complaint to be served as required by law, charging that Simmons discriminated in the prices at which it has sold and is now discriminating in the prices at which it has sold and is now selling its products of like grade and quality in interstate commerce, in violation of the provisions of subsection (a) of section 2 of said act, as amended.

Simmons duly filed its answer to said complaint which answer admits all the material allegations of fact set forth in said complaint. Said answer further waives the taking of evidence and all other intervening procedure herein and further hearing as to the said facts. The allegations contained in the concluding paragraph of the complaint (par. 9) were denied, in so far as they state conclusions of law to the effect that the price discriminations by Simmons constitute violations of the provisions of subsection (a) of section 2 of the act, as amended.

This proceeding regularly coming on to be heard upon said complaint and answer, filing of briefs and presentation of oral argument having been waived, the Commission having duly considered the same and being fully advised in the premises, and being of the opinion that Simmons has been and is violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, now makes these its findings as to the facts:

FINDINGS AS TO THE FACTS

Paragraph 1. Simmons is a corporation organized and existing under the laws of the State of Delaware and has its principal executive office and place of business at 230 Park Avenue, New York City, N. Y.

Par. 2. For many years prior to and since June 19, 1936, Simmons has been and now is engaged in the business of manufacturing, selling and distributing metal beds, bedsprings, studio couches, gliders, mattresses and miscellaneous allied products. That, except for certain lines manufactured on special order, constituting approximately 6 percent of its total United States business, its products are all

standardized. In the course and conduct of its business Simmons has been and now is manufacturing said products at its principal manufacturing plant, which is located at 551 Fifth Avenue, Kenosha, Wis., and at its eight other manufacturing plants, which are located at Watertown, Mass.; Elizabeth, N. J.; Atlanta, Ga.; Kansas City, Kans.; Dallas, Tex.; Seattle, Wash.; San Francisco, Calif., and Los Angeles, Calif. That Simmons maintains and operates approximately 55 warehouses situated in as many cities in over 30 States of the United States. That Simmons, for convenience in selling and delivering its merchandise, maintains and operates service stations and sales headquarters in each of the cities in which its warehouses are located. Simmons employs approximately 300 salesmen who call regularly on the retail trade. Simmons' total net sales in the United States amounted, in the year 1936, to approximately $28,000,000; in the year 1937, to approximately $31,000,000; in the year 1938, to approximately $24,500,000; and approximately 97 percent of its income from sales made in the United States is derived from sales to dealers who sell at retail.

PAR. 3. In the course and conduct of its business as aforesaid, Simmons transports or causes to be transported some of said products, when manufactured, from its plants aforesaid to its warehouses which are located, as hereinbefore set forth, in various States of the United States and oftentimes in States other than the States in which its plants are located and in which such shipments originated, and transports or causes to be transported its said products from its plants aforesaid or from its warehouses aforesaid to the purchasers thereof located in the several States of the United States and in the District of Columbia, other than the States in which its said plants are located, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between Simmons' plants, warehouses and distributing points and purchasers located in all of the States of the United States and the District of Columbia.

Simmons advertises many of its products nationally, particularly its highest quality merchandise, such as its "Beautyrest" mattresses and springs and has created a public demand for such products throughout the States of the United States, the District of Columbia, and elsewhere.

Simmons' plan for the marketing of its products is designed to and does in fact enable it to sell and distribute its products to dealers located in every State of the United States and the District of

Columbia. The business of Simmons is an integrated whole and is national in scope.

Simmons sells and distributes the aforesaid products for use, consumption or resale within the United States and in the District of Columbia, in the same States and places as and in competition with various other manufacturers of beds, bedding, and miscellaneous allied products. A few of said competing manufacturers distribute their products nationally, as does Simmons, but most of said competing manufacturers distribute their products to customers located within 250 or 300 miles of their manufacturing plants.

Simmons' customers who sell at retail are competitively engaged with each other locally, and to a lesser extent, nationally, and with the retailer customers of Simmons' competitors, in the resale of said products, said resales taking place in every State of the United States and in the District of Columbia.

PAR. 4. That Simmons, prior to and since June 19, 1936, has used in its pricing plan a sliding scale of discounts based upon the quantities of merchandise purchased in any one year by any one customer (hereinafter sometimes referred to as the "Simmons Plan"). The plan, briefly stated, as operative for the years prior to January 1, 1938, was as follows:

To any customer who purchased less than $50,000 worth of merchandise in any one calendar year, no discount was granted (except a 2 percent discount for cash). To any customer who purchased merchandise in any one year to an aggregate of $50,000 or more, the following scale of discounts applied:

$50,000 to $75,000	3 percent
$75,000 to $100,000	4 percent
$100,000 to $200,000	5 percent
$200,000 to $300,000	5½ percent
$300,000 to $400,000	6 percent
$400,000 to $500,000	6½ percent
$500,000 and over	7 percent

Aggregate purchases of a customer during a calendar year not only determined the rate of discount but the discount rate thus determined was retroactively applied to all purchases made during the year, even to those in the no-discount zone, so that if a customer bought $500,000 worth of merchandise in any one calendar year, he got the 7 percent discount on the first $50,000 worth of his purchases as well as on the remaining $450,000 thereof.

The discounts were computed and paid in cash by Simmons shortly after the end of each calendar year.

The Simmons Plan operates and is the same today as aforesaid, except that the schedule of discounts now in effect (effective as of January 1, 1938) is as follows:

$50,000 to $75,000	3 percent
$75,000 to $100,000	3½ percent
$100,000 to $150,000	4 percent
$150,000 to $200,000	4½ percent
$200,000 and more	5 percent

PAR. 5. That, for the purpose of granting and paying the aforementioned discounts, Simmons has at all times hereinbefore mentioned treated and now treats each of the following types of organizations as a single customer:

1. An individual, partnership, or corporation owning one and only one retail store (hereinafter referred to as an "individual customer").

2. An individual, partnership, or corporation owning more than one retail store, the individual retail stores or individual units not being incorporated (hereinafter sometimes referred to as a "central organization").

3. A corporation owning all or substantially all of the issued and outstanding equity stock of a number of separately incorporated retail stores, (hereinafter sometimes referred to as a "central organization").

4. A corporation, all or substantially all of the issued and outstanding equity stock of which is owned by another corporation, which, in turn, owns all or substantially all of the issued and outstanding equity stock of a number of separately incorporated retail stores, (hereinafter sometimes referred to as a "central organization").

5. Divers other organizations constituted similarly to the organizations set forth and described briefly in subdivisions (2), (3) and (4) of this paragraph 5 (hereinafter sometimes referred to as "central organizations").

That the discounts hereinbefore mentioned are paid in cash by Simmons to each individual customer, as hereinbefore defined, who qualifies therefor by purchasing the requisite amount of merchandise. That there are few such individual customers of Simmons in the entire United States who qualify for and receive such discounts. That, in granting, allowing and paying such discounts to individual customers who purchase $50,000 worth or more of Simmons' merchandise in any one year, Simmons has discriminated in price against competing individual customers who purchase less than $50,000 worth of Simmons' merchandise in such period.

That the discounts hereinbefore mentioned are paid in cash by Simmons to each of such central organizations, as hereinbefore defined, which qualify therefor by purchasing the requisite amount of merchandise, pursuant to oral understandings between Simmons and each of such central organizations to the effect that the aggregate purchases of the individual stores or units constituting each such central organization shall be used in determining the rate and the amount of the discounts payable to each such central organization.

That the quantities of merchandise purchased each year from Simmons by or for each of the individual retail stores or units constituting the central organizations which receive the aforementioned discounts are oftentimes no larger than, and oftentimes smaller than, the quantities of merchandise purchased during the same period by many individual customers who do not qualify for, and do not in fact, receive said discounts, and the individual retail stores or units constituting the herein mentioned central organizations are serviced in substantially the same manner by Simmons as are the individual customers herein mentioned. That, in many instances, the individual customers mentioned herein are in direct competition with one or more of the unit stores of one or more of the central organizations mentioned herein.

That in granting, allowing and paying discounts to the central organizations herein mentioned, Simmons has discriminated in price against individual customers herein mentioned who are in competition with one or more of the unit stores of one or more of such central organizations.

That manufacturers in competition with Simmons cannot obtain a part of the business of a central organization receiving the discounts even by offering an equal price, but must offer a sufficiently lower price to compensate said central organization for the loss of the discount on that portion of its requirements which it has already purchased or which it may be compelled to purchase from Simmons. That the effect of the discriminations in price in favor of central organizations and other large buyers may be substantially to lessen competition with and tend to create a monopoly in Simmons in the line of commerce in which it is engaged.

PAR. 6. That, for the purpose of granting and paying the aforementioned discounts, Simmons has at all times hereinbefore mentioned treated and now treats each of the following types of organizations as a single customer:

1. An independent individual, partnership, or corporation that acts or which is authorized to act, whether it in fact does so or not, as the buying agent for a number of otherwise independent and unrelated

individual customers or for a number of such customers and one or more central organizations (hereinafter sometimes referred to as a "syndicate head").

2. A corporation all or substantially all of the issued and outstanding equity stock of which is owned by a number of otherwise independent and unrelated individual customers and which acts or which is customarily authorized to act, whether it in fact does so or not, as the buying agent of said customers (hereinafter sometimes referred to as a "syndicate head").

3. A cooperative corporation of which a number of otherwise independent and unrelated individual customers are members, and which acts or which is customarily authorized to act, whether it in fact does so or not, as the buying agent of said customers (hereinafter sometimes referred to as a "syndicate head").

4. A loosely knit association of otherwise independent and unrelated individual customers or of a number of such customers and one or more central organizations, which may or may not act, or which may or may not be authorized to act, as the buying agent of the members thereof (hereinafter sometimes referred to as a "syndicate head").

5. Divers other organizations constituted similarly to the organizations set forth and described briefly in this paragraph 6.

That the discounts hereinbefore mentioned are paid in the first instance in cash by Simmons to each of such syndicate heads, as hereinbefore defined, as qualify therefor by reason of member purchases, pursuant to oral understandings between Simmons and each of such syndicate heads to the effect that the aggregate purchases of the individual customers and central organizations, if any, constituting or allied with each such syndicate head shall be used in determining the rate and the amount of the discounts payable in the first instance to each such syndicate head.

That each such syndicate head receiving the discounts pays over, either directly or indirectly, the total discounts initially received by it, or substantially all thereof, to the individual customers and central organizations, if any, of which it is comprised or which are allied with it, said payment bearing the sale ratio to the total discounts received by the syndicate head as the total purchases of the individual customer or central organization receiving it bear to the total purchases of all the individual customers and central organizations comprising or allied with said syndicate head. That the syndicate head is in every case the agent of the individual customers and central organizations, constituting or allied with it, for the purpose of receiving and passing on to such customers and organizations the discounts aforementioned.

That the quantities of merchandise purchased each year from Simmons by each of the individual customers or by each of the unit stores of the central organizations which receive the aforementioned discounts by reason of membership in or affiliation with a syndicate head, are oftentimes no larger than, and oftentimes smaller than, the quantities of merchandise purchased during the same period by many individual customers who do not qualify for and do not, in fact, receive said discounts, and the individual customers and the unit stores of the central organizations comprising or allied with the hereinmentioned syndicate heads are serviced in substantially the same manner by Simmons as are the individual customers who do not qualify for and do not in fact, receive said discount. That, in many instances, the individual customers who do not receive the discounts are in direct competition with one or more of the individual customers or one or more of the unit stores of one or more of the central organizations which are members of or allied with one or more of the syndicate heads mentioned herein.

That in granting, allowing and paying discounts, either directly or indirectly, to individual customers and to central organizations which are members of or affiliated with a syndicate head, Simmons has discriminated in price against nonmember or nonaffiliated individual customers who are in competition with one or more of the individual customers or one or more of the unit stores of one or more of the central organizations which are members of or allied with one or more of the syndicate heads mentioned herein. That in granting, allowing and paying a higher or greater discount, either directly or indirectly, to an individual customer or to a central organization which is a member of or affiliated with one syndicate head than to a competing individual customer or central organization which is a member of or affiliated with another syndicate head, Simmons has discriminated in price in favor of the former.

That the adoption of the "Simmons Plan" has encouraged some of the otherwise independent and unrelated individual customers of Simmons and central organizations purchasing from Simmons to become affiliated with syndicate heads already in existence and has caused the creation by others of said customers and organizations of other buying syndicates and similar groups. Many competitors of Simmons have unsuccessfully sought to sell their former and other potential customers who have "gone syndicate." The effect of the discriminatory treatment in favor of individual customers and central organizations which constitute or are allied with syndicate heads, as alleged in this paragraph 6, may be substantially to lessen com-

petition with and tend to create a monopoly in Simmons in the line of commerce in which it is engaged.

PAR. 7. The Simmons Plan, either alone or in combination with the practice of Simmons, hereinbefore described, of treating central organizations and syndicate heads as one customer for the purpose of computing and paying the discounts under the Plan, has operated to produce, amongst others, the following results, which are typical of many of the situations created thereby:

1. An individual customer purchasing over $50,000 worth of Simmons' merchandise in a year and receiving a 3 percent discount thereon may be in competition in the same city with an individual customer purchasing less than $50,000 worth of merchandise in such year and receiving no discount, yet the average size of the purchases of and deliveries to the latter customer may be considerably larger than the average size of the purchases of and deliveries to the former customer.

2. An individual customer purchasing $15,000 worth of Simmons' merchandise in a year and receiving no discount thereon may be in competition in the same locality of the same city with a unit store (of a central organization) which purchases but $5,000 worth of merchandise in the same period and receives a discount of from 3 percent to 5 percent on its purchases because of the aggregate purchases of all the unit stores of the central organization. Yet, Simmons may and usually does make deliveries to the unit store in exactly the same way as it makes deliveries to the individual customer, the average size of the deliveries to the individual customer are oftentimes larger than the average size of the deliveries to the unit store, its salesmen may call upon the unit store as often as on the individual customer, and not infrequently its salesmen actually take orders from the unit store, and in such cases Simmons invoices, bills, extends credit to and collects from the unit store, all in the same manner as it handles the accounts of its individual customers.

3. An individual customer purchasing $10,000 worth of Simmons' merchandise in a year and receiving no discount thereon may be in competition in the sale locality of the same city with another individual customer which purchases but $1,000 worth of Simmons' merchandise in such period, and receives a discount of from 3 percent to 5 percent on its purchases because it is a member of or is allied with a syndicate head. Yet, the Simmons' salesmen may and usually do call upon the affiliated individual customer as often as upon the non-affiliated individual customer. The orders of the former are solicited and taken in the same manner as in the case of the latter. Simmons makes delivery to the one in exactly the same way as it makes delivery

to the other and the average size of the deliveries to the unaffiliated individual customer is oftentimes larger than the average size of the deliveries to the individual affiliated customer. Simmons invoices, bills, extends credit to and collects from the affiliated individual customer and the nonaffiliated individual customer in the same manner.

4. An individual customer purchasing $10,000 worth of merchandise in a year and receiving a discount of 3 percent on its purchases because it is a member of or is allied with a syndicate head, the purchases of all of the members of which aggregate more than $50,000 but less than $75,000, may be in competition in the same locality of the same city with another individual customer purchasing but $1,000 worth of Simmons' merchandise in such period but receiving a discount of 5 percent on its purchases because it is a member of or is allied with a syndicate head, the purchases of all the members of which aggregate more than $200,000. Yet, the salesmen of Simmons contact, solicit and take orders from, and Simmons delivers its merchandise to, invoices, bills, extends credit to and collects from each of the individual customers mentioned herein in exactly the same manner. The only difference is that the average size of the deliveries to the individual customer purchasing $10,000 worth of merchandise a year and getting the smaller discount is apt to be larger than the average size of the deliveries to the individual customer purchasing $1,000 worth of merchandise a year but receiving the larger discount.

It is possible, under the operation of the Simmons Plan, for two individual customers of Simmons who are in competition with each other and who purchase exactly the same quantity of Simmons' products of like grade and quality during any year to pay aggregate prices therefor varying almost as much as $2,500. The advantage to the customers of Simmons who purchase at the lower prices may be reflected not only in price cutting but also in an increase in service, sales effort, sales appeal and in other ways that injure or tend to lessen competition with them, all of which operate to the disadvantage of the customers against whom these discriminations are employed.

PAR. 8. The price differentials (described in pars. 4, 5, 6, and 7 hereof) which have resulted from the Simmons Plan, described in paragraph 4 hereof, and the practical application thereof to central organization and syndicate heads, make other than due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which its products are sold or delivered by Simmons to the customers described, respectively, in said paragraphs.

PAR. 9. That the rebates or discounts granted, allowed and paid by Simmons have been made from its published prices for its standardized products. The amount of the rebates or discounts paid by Simmons, during the year 1936, amounted to more than $500,000; to approximately $750,000 during the year 1937 and to over $485,000 during the year 1938.

PAR. 10. The effect of such discriminations in price made by Simmons, as set forth in paragraphs 5 to 7, inclusive, hereof, may be substantially to lessen competition between Simmons and its aforesaid competitors; between the retailer customers of Simmons in whose favor such discriminations are made and Simmons' other retailer customers; between the retailer customers of Simmons' competitors who do not grant such customers the benefit of such discriminatory prices and the retailer customers who purchase of Simmons in favor of whom Simmons discriminate; tend to create a monopoly in Simmons in the aforesaid line of commerce; to injure, destroy or prevent competition with Simmons; to injure, destroy, or prevent competition with retailer customers of Simmons who receive the benefit of such discrimination.

CONCLUSION

The Commission concludes that respondent Simmons Co. has discriminated in price between different purchasers of its products of like grade and quality, as set forth in paragraphs 4 to 7, inclusive, hereof, and has been and is violating subsection (a) of section 2 of the Clayton Act, as amended.

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 Simmons Co. (hereinafter referred to as "Simmons") by which Simmons admits all the material allegations of fact set forth in said complaint and waives the taking of testimony and all other intervening procedure herein and further hearing as to said facts, and the Commission being of the opinion upon the facts so admitted that Simmons has violated and is violating the provisions of subsection (a) 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 (the Clayton Act) as amended and having made its report stating its findings as to the facts.

It is ordered, That Simmons, its officers, representatives, agents, and employees, in connection with the distribution and sale of its

products in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist from:

(a) Discriminating in price, directly or indirectly, between different retailer purchasers of its products of like grade and quality by granting, allowing, or paying the cumulative discounts of the Simmons Plan, as set forth in paragraph 4 of said findings as to the facts, heretofore granted, allowed and paid by Simmons.

(b) Continuing to practice the discriminations in prices adjudged to be unlawful in the aforesaid findings and conclusions; and

(c) Discriminating in price, directly or indirectly, by granting, allowing, or paying, directly or indirectly, to any of its customers, whether individual customers, central organizations or syndicate heads, as said customers are defined in the aforesaid findings, any cumulative or retroactive quantity discounts either under the aforesaid Simmons Plan or any plan or method like or similar thereto making provision for the granting, allowing, or paying of cumulative or retroactive quantity discounts.

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

IN THE MATTER OF

THE JOSEPH DIXON CRUCIBLE 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 3643. Complaint, Nov. 1, 1938—Decision, Aug. 28, 1939

Where some 13 corporations, which were and had been for some time past engaged in manufacture and sale of wood-cased lead pencils, and made and sold approximately 75 percent of such pencils produced in the United States, and were actively and substantially engaged in competition with one another in making and seeking to make sales of such pencils in commerce among the several States and in the District of Columbia, except insofar as said competition had been hindered, lessened, restricted, or restrained and potential competition among them forestalled by understandings and agreements among them and acts and things done in pursuance thereto, as below set forth; acting directly through and by means of their association and its secretary, or among themselves—

(*a*) Entered into and carried out understandings and agreements with intent and effect of unlawfully restricting, restraining, suppressing, and eliminating competition in sale of comparable wood-cased lead pencils in trade and commerce as aforesaid; and in pursuance of said agreements and understandings, and in furtherance thereof—

1. Agreed to and did fix and maintain uniform prices, terms, and conditions for sale of said products.

2. Agreed to and did change, simultaneously, prices at which they were to sell such products;

3. Agreed to and did adopt, fix, and determine uniform schedules of quantity or annual cumulative discounts thereof;

4. Agreed to and did fix and determine prices of "blanks," or wood-cased lead pencils upon which neither name nor any brand of manufacturer appears; and

5. Agreed to and did offer uniform bids on comparable wood-cased lead pencils to prospective purchasers thereof; and

Where said various member corporations, acting through their said association and in a manner calculated to effect said agreements and understandings to fix and maintain prices on such products as aforesaid, and with capacity and tendency to accomplish the same—

(*b*) Agreed to and did investigate and consult with each other with reference to standardization program having as its objective limitation of styles, grades, and qualities of wood-cased lead pencils made and offered by such members;

(*c*) Agreed to and did report, through and by means of such association in the above manner and with the above capacity and tendency, monthly statistics of each member, showing new orders, production for shipment, unfilled orders, and inventory of finished stock, and caused said association to report to each member industry totals and each member's own individual percentage thereof;

(*d*) Agreed to and did classify, through said association, members thereof with respect to amount of business done by each member annually, in determining respective dues to be paid to association and representation to which each member would be entitled on said association's committees; and

(*e*) Agreed to and did supervise, through said association and its said secretary, aforesaid activities of such various members, performed by means of and through said association:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public, and had dangerous tendency to and did actually hinder and prevent price competition, during period involved, between and among the members in the sale of comparable wood-cased lead pencils in commerce, and placed in the hands of such members, association and secretary power to control and enhance prices and unreasonably restrain commerce aforesaid, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Mr. Harrison F. McConnell, of New York City, for respondents generally, of whom others were also represented as follows, to wit:

Wall, Haight, Carey & Hartpence, of Jersey City, N. J., and *Mr. Gilbert H. Montague*, of New York City, for The Joseph Dixon Crucible Co.

Edwards & Smith, of New York City, for The Eberhard Faber Pencil Co.

Riegelman, Hess, Strasser & Hirsch, of New York City, for The American Lead Pencil Co.

Guggenheimer & Untermyer, of New York City, for Eagle Pencil Co., Inc.

Guggenheimer & Untermyer & Goodrich, of Washington, D. C., for Blaisdell Pencil Co., and

Mr. Gilbert H. Montague, of New York City, for Richard Best Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., Wallace Pencil Co. and The Lead Pencil Association, Inc., and, along with *Wall, Haight, Carey & Hartpence*, of Jersey City, N. J., for The Joseph Dixon Crucible Co.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, associations, firms, and individuals hereinafter named, described, and referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joseph Dixon Crucible Co., 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 in Jersey City, N. J.

Respondent, The Eberhard Faber Pencil Co., 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 in Brooklyn, N. Y.

Respondent, The American Lead Pencil Co., 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 in Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located in New York, N. Y.

Respondent, Richard Best Pencil Co., 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 in New York, N. Y.

Respondent, Blaisdell Pencil Co., is a wholly owned subsidiary of respondent, Eagle Pencil Co., Inc., and has its principal office and place of business located in Philadelphia, Pa.

Respondent, General Pencil Co., 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 Jersey City, N. J.

Respondent, Hassenfeld Brothers, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Rhode Island, with its principal office and place of business located in Providence, R. I.

Respondent, National Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Shelbyville, Tenn.

Respondent, Reliance Pencil Co., 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 in Mount Vernon, N. Y.

Respondent, Universal Pencil Co., 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 in San Leandro, Calif.

Respondent, Red Cedar Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Lewisburg, Tenn.

Respondent, Wallace Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Missouri, with its principal office and place of business located in St. Louis, Mo.

Respondent, The Lead Pencil Association, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located at 21 East Fortieth Street, New York City.

Respondent, William A. McDermid, is the president and commissioner of The Lead Pencil Association, Inc., and has his principal office and place of business at 21 East Fortieth Street, New York City.

PAR. 2. All of the respondents herein named, with the exception of the respondents, The Lead Pencil Association, Inc., and William A. McDermid, are engaged in the manufacture and sale of wood-cased lead pencils, and have been engaged in such business for the past several years.

In the course and conduct of their respective businesses, all of the respondents, with the two exceptions heretofore named, have made, and are making or causing to be made, numerous shipments of wood-cased lead pencils from the States in which their respective places of business are located to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said wood-encased lead pencils, 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. Prior to 1926, there were in the wood-cased lead pencil industry, in addition to respondents, The Joseph Dixon Crucible Co., the Eberhard Faber Pencil Co., The American Lead Pencil Co., and the Eagle Pencil Co., Inc., which four respondents are commonly called the "Big Four," only two or three small independent concerns. In 1926, because of the rapid exhaustion of satisfactory pencil wood in the red cedar district around Shelbyville, Tenn., the aforementioned four respondents established their own pencil wood mills (slat factories) in California. The Tennessee cedar mills then went into the business of manufacturing lead pencils, and there are now engaged in such business in the vicinity of Shelbyville, Tenn., the two respondents, The National Pencil Co. and Red Cedar Pencil Co., and another, the Empire Pencil Co. of Shelbyville, Tenn.

For many years, the respondents hereinbefore referred to as the "Big Four," together with all other wood-cased lead pencil manufacturers, became members of the Lead Pencil Institute, Inc. During the year 1935, price war developed and lasted through 1936. Toward the end of 1936, the industry began seeking means whereby prices could be restored. Dissatisfaction occurred over the Lead Pencil Institute, Inc., and respondent, William A. McDermid, a so-called business specialist, was approached by a representative of respondent, The Eagle Pencil Co., with a view toward forming a new organization to be known as The Lead Pencil Association, Inc. On January 27, 1937, a meeting of the budget committee of the Lead Pencil Institute, Inc., was held, and it was voted to engage McDermid for the purpose of directing the selling policies of the industry. The constitution and bylaws of the Lead Pencil Institute, Inc., were changed by an amendment to the original charter, made effective on March 5, 1937, and on that date respondent, The Lead Pencil Association, Inc., came into existence with respondent, William A. McDermid acting as its president and commissioner.

PAR. 4. Respondent, The Lead Pencil Association, Inc., hereinafter referred to as the "Association," is composed of respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., hereinafter referred to as respondent "members." Said respondent members constitute all of the manufacturers of wood-cased lead pencils in the United States, except the Mohican Pencil Co. of Philadelphia, Pa., and the Empire Pencil Co. of Shelbyville, Tenn. Together, said respondent members manufacture and sell in excess of 90 percent of all wood-cased lead pencils manufactured and sold in the United States.

PAR. 5. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, repondent members were in active and substantial competition with each other in the making, and seeking to make, sales of wood-cased lead pencils in commerce between and among the several States of the United States and in the District of Columbia, and but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

PAR. 6. Beginning with the formation of respondent association in January 1937, respondent members, all acting directly and through and by means of respondent association, and by other means and

methods, entered into, and thereafter carried out, understandings, agreements, combinations, and conspiracies, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, and suppressing, and eliminating competition in the sale of wood-cased lead pencils in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members 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, terms, and conditions for the sale of wood-cased lead pencils in the United States.

2. Agreed to maintain, and have maintained, identical price lists on comparable pencils.

3. Agreed to change, and have changed, simultaneously the prices at which comparable pencils are to be sold in the United States.

4. Agreed to establish, and have established, uniform agency contracts for local distributors whereby, when said distributors offer bids to public agencies, the distributor's commission is limited to 10 percent, and by which contracts respondent members are given the absolute right to fix the prices at which pencils are offered by the distributors.

5. Agreed to adopt, fix and determine, and have adopted, fixed and determined, uniform schedules of discount to be allowed on quantity shipments, and on annual cumulative purchases.

6. Agreed to fix and determine, and have fixed and determined, discounts and methods of sale for so-called "imprint" pencils (pencils upon which no name appears so that the purchasers thereof may imprint their own names thereon) for the purpose, and with the effect, of having uniform net prices at which said "imprint" pencils are sold by respondent members.

7. In order to better effectuate the aforementioned agreements, respondent members have agreed to

(a) Investigate and consult with each other, and they have investigated and consulted, with respect to a standardization program having as its objective a limitation of the number, style, grade, and quality of wood-cased lead pencils manufactured and offered for sale.

(b) Interchange through the Association, and they have so interchanged, monthly statistics from members showing new orders, production for shipments, unfilled orders, and inventory of finished stock.

(c) Classify, and they have so classified, the members of the Association into different classes according to the amount of business done by each member annually.

(d) Supervise by means of respondent Association and respondent McDermid, and they have so supervised, the activities of respondent members, for the purpose and intent, and with the result, of securing adherence by respondent members to such agreed prices and terms and conditions of sale, and more particularly to prevent and prohibit the quotation of lower competitive prices by respondent members not comprising the "Big Four."

(e) Offer, and they have offered, uniform bids, either directly or through their distributor agents to prospective purchasers.

8. Used, and are now using, other unlawful means and methods in restricting, restraining, suppressing, preventing, and eliminating competition in the sale of wood-cased lead pencils in the United States.

PAR. 8. Each of said respondent members has acted and now acts 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, and by means of and through the respondent McDermid, and by and through other means and methods, in doing and performing the acts and practices hereinabove alleged in furtherance of said understandings, agreements, combination, and conspiracies.

PAR. 9. The acts and practices of the respondents herein alleged are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented price competition between and among respondent members in the sale of wood-cased lead pencils in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in wood-cased lead pencils, and constitute unfair methods in competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of November 1938, issued and served its complaint in this proceeding upon respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld

Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., Wallace Pencil Co., The Lead Pencil Association, Inc., and William A. McDermid, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently all of the respondents filed their answers in this proceeding. Thereafter, stipulation was entered into whereby it was stipulated and agreed that a certain 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 and in opposition thereto, and that 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. The filing of briefs was waived and oral argument before the Commission was not requested. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, 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, The Joseph Dixon Crucible Co., 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 Jersey City, N. J.

Respondent, The Eberhard Faber Pencil Co., 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 in Brooklyn, N. Y.

Respondent, The American Lead Pencil Co., 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 in Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located in New York, N. Y.

Respondent, Richard Best Pencil Co., 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 Irvington, N. J.

Respondent, Blaisdell Pencil Co. (referred to in the complaint as Blaisdel), is a corporation organized, existing, and doing business by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Philadelphia, Pa.

Respondent, General Pencil Co., 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 Jersey City, N. J.

Respondent, Hassenfeld Brothers, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Rhode Island, with its principal office and place of business located in Providence, R. I.

Respondent, National Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Shelbyville, Tenn.

Respondent, Reliance Pencil Co., 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 in Mount Vernon, N. Y.

Respondent, Universal Pencil Co., 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 in Oakland, Calif.

Respondent, Red Cedar Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Lewisburg, Tenn.

Respondent, Wallace Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Missouri, with its principal office and place of business located in St. Louis, Mo.

Respondent, The Lead Pencil Association, Inc. (hereinafter referred to as "Association"), is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located at 21 East Fortieth Street, New York City.

Respondent, William A. McDermid, is the president and commissioner of The Lead Pencil Association, Inc., and has his principal office and place of business at 21 East Fortieth Street, New York City.

PAR. 2. All of the respondents herein named, with the exception of the respondents The Lead Pencil Association, Inc., and William

A. McDermid, are engaged in the manufacture and sale of wood-cased lead pencils, and have been engaged in such business for the past several years.

In the course and conduct of their respective businesses, all of the respondents, with the two exceptions heretofore named, have made, and are making or causing to be made, numerous shipments of wood-cased lead pencils from the States in which their respective places of business are located to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said wood-cased lead pencils, 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. The following companies or concerns that were founded on or about the dates hereinafter stated are now engaged in the wood-cased lead pencil industry in the United States and are the only concerns of any importance now so engaged that are known either to the Commission or to the respondents:

1. Respondent, The Joseph Dixon Crucible Co., Jersey City, N. J., founded 1827.

2. Respondent, The Eberhard Faber Pencil Co., Brooklyn, N. Y., founded 1849.

3. Respondent, Eagle Pencil Co., Inc., New York City, founded 1857.

4. Respondent, The American Lead Pencil Co., founded 1864.

5. Respondent, General Pencil Co., founded under the name of Pencil Exchange and incorporated 1890.

6. Respondent, Blaisdell Pencil Co., of Philadelphia, Pa., founded 1893.

7. Respondent, Richard Best Pencil Co., Irvington, N. J., founded 1891.

8. Mohican Pencil Co. of Philadelphia, Pa., founded 1910, at the time known as the United States Pencil Co.

9. Respondent, Wallace Pencil Co., of St. Louis, Mo., founded under the name of Standard Pencil Co., in 1915.

10. J. R. Musgrave Pencil Co., founded about 1925 and previously in the Southern cedar slat business under the name of Bedford Cedar Co.; J. R. Musgrave Pencil Co. was the trade name for the business owned and operated by Mr. James R. Musgrave who is now deceased; on September 16, 1938, the county court of Bedford County, Tenn., appointed as administrators of his estate the Third National Bank of Nashville, Tenn., and the Peoples National Bank of Shelbyville, Tenn.

11. Empire Pencil Co., Shelbyville, Tenn., founded in New York in 1923.

12. Respondent, National Pencil Co.. Shelbyville, Tenn., founded about 1933.

13. Respondent, Red Cedar Pencil Co., Lewisburg, Tenn., founded about 1928, an outgrowth of Houston and Liggett, Inc., who were originally in the Southern cedar slat business.

14. Respondent, Universal Pencil Co., Oakland, Calif., organized in 1936.

15. Respondent, Reliance Pencil Co., Mount Vernon, N. Y., founded about 1935, an outgrowth of the Red Cedar Pencil Co.

16. Respondent Hassenfeld Brothers, Inc., Providence, R. I., began the manufacture of pencils, in addition to a paper box business, in 1934.

17. Koh-I-Nor Pencil Co., owned by German interests, Bloomsburg, N. J., commenced operations about September 1938.

18. Linton Pencil Co., Shelbyville, Tenn., outgrowth of National Pencil Co., founded 1939.

All of the aforementioned concerns which are named as respondents in this cause are members of the respondent, The Lead Pencil Association, Inc., except that the respondent, The American Lead Pencil Co., did in June 1938, resign from membership in respondent, The Lead Pencil Association, Inc.

In addition to the foregoing concerns, there are four importing sales agencies for foreign manufacturers which sell and distribute in the United States wood-cased lead pencils manufactured outside of the United States.

PAR. 4. In May 1929, the Lead Pencil Institute was incorporated under the laws of the State of Delaware. Its members comprised practically all of the companies engaged in the wood-cased pencil industry at that time. During the year 1935 a price war developed which lasted during 1936. Toward the end of 1936 the industry began to seek means whereby such a price war could be eliminated. This resulted in the reorganization of the Lead Pencil Institute during the month of January 1937; the respondent, William A. McDermid was employed on February 15, 1937, and became the president and commissioner of said Lead Pencil Institute, and the corporate title of said Institute was changed to that of respondent, The Lead Pencil Association, Inc., shortly thereafter.

Respondent Association is composed of respondents The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co. (which withdrew from respondent Association in June 1938), Eagle Pencil Co., Inc., Richard Best Pencil Co., Blais-

dell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., hereinafter referred to as respondent "Members."

Respondent members manufacture and sell approximately 75 percent of the wood-cased lead pencils produced in the United States.

PAR. 5. Respondent members are actively and substantially engaged in competition with one another in making, and seeking to make, sales of wood-cased lead pencils in commerce between and among the several States of the United States and the District of Columbia, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

PAR. 6. The following are the shipments and sales of wood-cased lead pencils by domestic manufacturers for the periods shown, under the conditions specified in the notes thereunto appended:

Shipments and sales of wood-cased lead pencils by domestic manufacturers

	Gross	Total sales	Average price per gross		Gross	Total sales	Average price per gross
1926	5, 732, 734	$14, 467, 053	$2. 52	1933 [1]	3, 772, 829	$7, 873, 569	$2. 09
1927	6, 100, 349	14, 457, 827	2. 37	1934 [1]	3, 638, 190	8, 457, 204	2. 32
1928	5, 870, 856	13, 994, 468	2. 38	1935 [1]	4, 042, 987	9, 461, 696	1. 78
1929	5, 596, 424	13, 816, 552	2. 47	1936 [1]	4, 336, 056	8, 172, 856	1. 88
1930	5, 386, 781	11, 763, 071	2. 18	1937 [2]	5, 496, 998	9, 708, 612	1. 76½
1931	4, 650, 589	10, 068, 380	2. 16	1938 [3]	3, 908, 188	7, 421, 618	1. 90
1932	3, 926, 937	7, 690, 988	1. 96				

[1] 9 companies reporting.
[2] 13 companies reporting for January to October, 12 for November and December.
[3] 12 companies reporting January and February, 13 March to September, 11 October and November, 10 December.

Figures from 1926 to 1932 inclusive from page 7 of report No. 91, Tariff Commission (12 companies reporting). Figures from 1933 to 1937 inclusive from Lead Pencil Institute and Lead Pencil Association, Inc.

PAR. 7. During the period extending from on or about January 1, 1937 to on or about November 1, 1937, hereinafter referred to as "said period," respondent members did from time to time, acting directly through and by means of respondent Association, or among themselves, enter into and thereafter carry out, understandings and agreements for the purpose and with the effect of unlawfully restricting, restraining, suppressing, and eliminating competition in the sale of comparable wood-cased lead pencils in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 8. Pursuant to said understanding and agreements and in furtherance thereof, said respondent members did, from time to time

during said period, agree to fix and maintain, and did fix and maintain uniform prices, terms and conditions for the sale of certain comparable wood-cased lead pencils; did agree to change simultaneously, and did change simultaneously, the prices at which they were to sell certain comparable wood-cased lead pencils; did agree to adopt, fix, and determine, and did adopt, fix and determine uniform schedules of quantity or annual cumulative discounts on said comparable wood-cased lead pencils; did agree to fix and determine, and did fix and determine, the prices of wood-cased lead pencils known in the trade as "blanks," which are pencils upon which neither the name nor any brand of the manufacturer appears (such "blanks" being what are referred to in the complaint as "imprints," although "imprints" are pencils on which appears the brand of someone other than the manufacturer); did agree to offer, and did offer, uniform bids on certain comparable wood-cased lead pencils to prospective purchasers thereof.

PAR. 9. Respondent members did also, through and by means of respondent association, from time to time, during said period, in a manner calculated to effectuate the aforementioned agreements and understandings to fix and maintain prices on certain comparable wood-cased lead pencils, and having the capacity and tendency to accomplish same, agree to investigate and consult with each other, and did so investigate and consult, with reference to a standardization program having as its objective a limitation of the styles, grades, and qualities of wood-cased lead pencils manufactured and offered for sale by said members. (An investigation and consultation had been made in conjunction with the National Bureau of Standards, prior and during the period when the National Recovery Act was in operation, in an effort to have said Bureau promulgate Simplified Practice Recommendation for Wood-Cased Lead Pencils which recommendation would have been promulgated by the Bureau if the producers, distributors, and consumers representing that industry had formally expressed their acceptance of the proposed Simplified Practice Recommendation, but the industry not having reached any final binding conclusion as to the acceptability of the proposed Simplified Practice Recommendation, it was not promulgated by the National Bureau of Standards.) Respondent members also agreed, through and by means of respondent association, from time to time, during said period, in the aforementioned manner and with the aforementioned capacity and tendency, to report to the association, and did so report, monthly statistics of each respondent member showing new orders, production for shipment, unfilled orders, and inventory

of finished stock and did cause said Association to report to each member industry totals and its own individual percentage of such totals; further, respondent members, in the same manner and with the same capacity and tendency, did agree, through respondent association, from time to time, during the aforementioned period, to classify, and did classify respondent members of respondent association into different classes according to the amount of business done by each respondent member annually in determining respective dues to be paid to the association and the representation to which each member would be entitled on association committees. Still further, respondent members, acting through and by means of respondent association and respondent William A. McDermid, during said period, from time to time, in the same manner and with the same capacity and tendency, did agree to supervise, and did supervise, all of the aforesaid activities of said respondent members, performed by means of, and through, said respondent association.

PAR. 10. Each of said respondent members acted in concert and in cooperation with other respondent members, from time to time during said period, either by means of and through respondent association, its officers, representatives, and agents, or by means of, and through respondent McDermid, or among themselves, in doing and performing the acts and practices hereinabove found, in furtherance of said understandings and agreements.

CONCLUSION

The acts and practices of respondents, as hereinabove found, are all to the prejudice of the public, have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition from time to time during said period, between and among respondent members in the sale of comparable wood-cased lead pencils in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in wood-cased lead pencils 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 and a stipulation entered into by and between the respondents herein and W. T. Kelley, chief counsel for the Federal Trade Commission, 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, 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, which stipulation was approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., their representatives, successors, and assigns, officers, agents, and employees, directly or indirectly, or through or by means of respondent, The Lead Pencil Association, Inc., or any other association of lead pencil manufacturers, its officers, representatives and agents, or through or by means of respondent William A. McDermid, or any other party, or by any other means, that the respondents, The Lead Pencil Association, Inc., its successors or assigns, and William A. McDermid, shall all, in connection with the offering for sale, sale or distribution of wood-cased lead pencils in commerce between and among the various States of the United States and in the District of Columbia, forthwith cease and desist from doing, by agreement or combination, the following acts and things:

1. Fixing or maintaining uniform prices, terms or conditions for the sale of comparable wood-cased lead pencils.

2. Changing simultaneously the prices at which comparable wood-cased lead pencils are to be sold or are sold.

3. Adopting, fixing or determining uniform schedules of quantity or annual cumulative discounts on comparable wood-cased lead pencils.

4. Fixing or determining uniform prices of wood-cased lead pencils known in the trade as "blanks," which are pencils upon which neither the name nor any brand of the manufacturer appears.

5. Offering uniform bids on comparable wood-cased lead pencils to prospective purchasers thereof.

6. (*a*) Investigating or consulting with each other with respect to a standardization program having as its objective the limitation of the styles, grades or qualities of wood-cased lead pencils manufactured and offered for sale by any of the respondents, (*b*) reporting to The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, monthly statistics by each member of such an association, showing new orders, production

for shipment, unfilled orders, and inventory of finished stock, and causing said association to report to each member thereof industry totals with the individual percentage of any number of such totals, (*c*) classifying the members of The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, into different classes according to the amount of business done by each respondent member thereof annually, (*d*) having The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, or William A. McDermid, or any other party or parties connected with The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, supervise the activities of the members of such an association where any or all of the said acts or practices hereinbefore set out in subparagraphs (*a*), (*b*), (*c*), and (*d*) hereof are done for the purpose of effectuating any agreement or combination to fix or maintain uniform prices in the United States for the sale of comparable wood-cased lead pencils.

It is further ordered, That nothing herein shall be construed to prevent the respondents, or any of them, from investigating or consulting with one another, for the purpose of attempting to work out a simplification program for the pencil industry, whether said investigation or consultation is done in conjunction with the National Bureau of Standards, in accordance with the procedure of said Bureau or amongst any or all of respondents: *Provided, however*, That such investigation or consultation shall not be for the purpose of effectuating any agreement or combination among any or all of said respondents to fix or maintain uniform prices on comparable wood-cased lead pencils or to commit any of the other acts or things from which they are ordered herein to cease and desist.

It is still further ordered, That the respondents named in the above caption shall each 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

E. A. HOFFMAN 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 3443. Complaint, May 24, 1938—Decision, Sept. 2, 1939

Where a corporation engaged in manufacture of candy and in sale and distribution thereof to purchasers in various States—

Furnished to customers various devices and plans for selling its said merchandise which involved operation of games of chance, gift enterprises, or lotteries for distribution of such merchandise to ultimate consumers wholly by lot or chance, and which included pushcards for use in sale and distribution of said products, in accordance with (1) said card's explanatory legend and plan, by which purchaser selecting by chance for 5 cents paid, feminine name from list of 30 corresponding with that concealed under card's master seal, received package of candy retailing for $1.50 and other patrons received nothing, or (2) in accordance with other similar plans differing only in minor detail from that above described; and

Placed thereby in the hands of others means of conducting games of chance or lotteries in the sale of its merchandise contrary to the established public policy of the United States Government and in violation of the criminal laws;

With result that many persons were attracted by element of chance involved in its said sales plan or method of distribution of its merchandise, and were thereby induced to buy and sell same in preference to that offered by its competitors, many of whom do not use the same or similar method of distribution as contrary to public policy, and trade was thereby unfairly diverted to it from competitors aforesaid:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. D. C. Daniel and *Mr. Reuben J. Martin* for the Commission.

Mr. Harry C. Bartosh, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that E. A. Hoffman Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, E. A. Hoffman Candy Co., is a corporation organized and doing business under the laws of the State of California, with its offices and principal place of business located at 6600 Avalon Boulevard, Los Angeles, Calif. 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 dealers. Respondent causes, and has caused, its products, when sold to be transported from its principal place of business in the city of Los Angeles, Calif., to purchasers thereof located in the State of California 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 respondent 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 its business, respondent is in competition with other corporations and with individuals and partnerships likewise 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 its business as described in paragraph 1 hereof, respondent sells and has sold to 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 consists of a package of candy and a device commonly called a pushcard. Said package of candy is displayed to the purchasing public and is awarded to a purchaser by means of said pushcard in the following manner: The pushcard contains a number of partially perforated discs, a printed feminine name adjacent to each disc, and a blank space opposite each feminine name for writing in the name of the customer. The pushcard has a master seal concealed within which is one of the feminine names appearing adjacent to the discs on said card. Sales are 5 cents each, and upon perforation of a disc and selection of one of the printed feminine names, the customer writes his name in the blank opposite such feminine name. When the last printed feminine name has been selected and the last disc perforated, the master seal is removed and the feminine name concealed thereunder is disclosed. The purchaser who selected the feminine name corresponding to the feminine name disclosed under the master seal is awarded the package of candy. The remaining purchasers receive nothing for their money. The name printed under the master seal is effectively concealed from

purchasers and prospective purchasers until all purchases have been made, all feminine names selected and the last disc separated from the card. The said package of candy is thus awarded to the purchaser of a push from said card wholly by lot or chance.

Respondent furnishes or sells various pushcards and punchboards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Said punchboards are similar, varying only in detail in that on a 400-hole punchboard, 34 purchasers receive something for their money and the remaining 366 purchasers receive nothing for their money.

PAR. 3. Retail dealers who purchase respondent's candy 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 the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy to purchase respondent's candy 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 package 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 is contrary to an established policy of the government of the United States and in violation of the criminal laws. 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 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 elements of chance or lottery. 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 to sell their products so packed and assembled as above alleged, or by any other method involving a game of chance or lottery 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 a capacity and tendency, because of said game of

chance, to divert to respondent trade and custom from its 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 against public policy and unlawful, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by 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 the same method or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, 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 May, A. D. 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent, E. A. Hoffman Candy Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuing 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 Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly appointed by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. No evidence was introduced by respondent. Thereafter the proceedings regularly came on for final hearing before the Commission on the complaint of the Commission, the answer thereto, the 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. Respondent, E. A. Hoffman Candy Co., is a corporation, having been incorporated under the laws of the State of Cali-

fornia in the year of 1923. Its principal office and place of business is located at 6600 Avalon Boulevard, Los Angeles, Calif.

PAR. 2. Respondent is now, and since the date of its incorporation has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and at all times mentioned herein has caused, its products when sold to be transported from its aforesaid principal place of business to purchasers of said candy located in 12 of the Western States of the United States at their respective places of business. There is now, and at all times mentioned herein has been, a course of trade by said respondent in such candy in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 4. Respondent, in the course and conduct of its said business, furnishes to its customers various devices and plans for selling its merchandise which involve the operation of games of chance, gift enterprises, or lotteries, by the use of which, said merchandise is distributed to the ultimate consumers wholly by lot or chance. One of the methods, or sales plans, adopted and used by respondent is as follows: Respondent furnishes its customers with push cards, having 30 disks marked "Push," above each of which is printed a feminine name; there is also a master seal covering one of the said feminine names which is not disclosed until the seal is removed. The consumer customer, upon payment of 5 cents, punches one of the said disks and signs his name above this disk. After all the disks have been punched, the master seal is removed and the patron who has punched the disk bearing the same feminine name as that which was covered by the master seal receives a package of candy which retails for $1.50. The patrons who pushed the other disks receive nothing. Respondent distributes to its customers several other types of push cards, differing only in minor detail from that hereinabove described.

PAR. 5. Respondent, by the sales method hereinbefore described, places in the hands of others the means of conducting games of chance or lotteries in the sale of its merchandise, and said method of sale and distribution of its merchandise is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 6. Many persons are attracted by the element of chance involved in respondent's sales plan or method of distribution of its merchandise and are thereby induced to buy and sell respondent's merchandise in preference to that offered for sale by its competitors, many of whom do not use the same or similar method of distribution because such method is contrary to public policy, and, as a result, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (respondent having offered no testimony or other evidence in opposition to the allegations of the said complaint), brief of counsel for the Commission filed herein (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, E. A. Hoffman Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy 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 dealers assortments of candy together with push or pull cards, punchboards, or other lottery devices which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

3. Supplying to or placing in the hands of dealers push or pull cards, punchboards or other lottery devices either with assortments of candy or other merchandise or separately which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

4. Selling or otherwise disposing of said candy or any other merchandise by use of push or pull cards or other lottery devices.

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

WILLIAM P. BENNETT AND CHARLES C. BENNETT, CO-PARTNERS, DOING BUSINESS UNDER THE TRADE NAME OF PEANUT 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 2961. Complaint, Aug. 4, 1937[1]*—Decision, Sept. 7, 1939*

Where two partners engaged in manufacturing or processing, roasting, and packaging peanuts, and in selling and distributing same to wholesalers, jobbers, wagon peddlers, and retailers in accordance with a plan which included (1) packing of the individual 5-cent containers in 30 container cartons, included with each of which cartons were not less than 2 or more than 7 nickels placed in certain unidentifiable containers therein enclosed, and included with which cartons there were also enclosed in every sixth carton either quarter and 2 nickels in certain units or 7 nickels, or 2 nickels and one 50-cent piece with every twelfth carton, or 2 nickels and dollar bill with every twenty-fourth, so that there was included with every 24 cartons, as identified on the outside thereof by letters for dealer, definite sum of money amounting to $3.40 and in prizes ranging from a nickel to a dollar in individual cartons and so concealed therein that customer had no knowledge prior to opening 5-cent package selected as to whether or not it would contain peanuts only or peanuts and prize, and (2) the furnishing of display card for retailer's use, explanatory or suggestive of such plan and offer of said "Believe It or Not Lucky Peanuts," and (3) the marking of each carton with similar explanatory matter—

Sold and distributed its said "Believe It or Not" peanuts, together with aforesaid explanatory display card for retailer's use, to wholesalers and jobbers for display and resale of said assortments by retail dealer purchasers thereof to purchasing public, in accordance with aforesaid plan involving lottery scheme, game of chance or gambling method; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of their said "Believe It or Not" peanuts in accordance with said plan contrary to the established public policy of the United States Government, and in violation of the criminal laws, and in competition with those who are unwilling to adopt and use such lottery scheme, game of chance or gambling method, 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;

With result that gambling was encouraged among those who were enticed by element of chance to purchase such packaged peanuts in preference to purchasing packaged peanuts which do not contain prizes, and many dealers in, and ultimate purchasers of, packaged peanuts were attracted by their said method or manner of packing said product, and by element of chance involved in sale thereof as above set forth, and were thereby induced to purchase said peanuts, thus packed and sold by them, and with tendency

[1] Amended and supplemental.

and capacity, by reason of such method, to eliminate from trade in question all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method, and with effect of unfairly diverting trade and custom to them from their competitors who are unwilling to, and do not, use such or equivalent method in sale and distribution of their peanuts, and of depriving purchasing public of benefit of free competition in trade aforesaid:

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

Before *Mr. Miles J. Furnas*, *Mr. W. W. Sheppard*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Henry C. Lank, *Mr. P. C. Kolinski*, *Mr. D. C. Daniel*, *Mr. J. J. Smith*, *Jr.*, and *Mr. Edw. W. Thomerson* for the Commission.

Mr. Walter L. Barlow, *Mr. LaVergne Guinn*, *Mr. Harry I. Freedman*, *Mr. Franklin E. Spafford*, *Mr. Frank Holaday*, and *McCombs & Andress*, of Dallas, Tex., for respondents.

Amended and Supplemental Complaint

Whereas, The Federal Trade Commission did heretofore, to wit, on October 30, 1936, issue its complaint herein charging that respondents herein were 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 respondents herein are engaged in business other than as described in said complaint and 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 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 William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., have been and now are 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. Respondents, William P. Bennett and Charles C. Bennett, are individuals doing business as a copartnership under the trade name of Peanut Novelty Co., with their principal office and

place of business located at 1615 North Prairie Avenue, Dallas, Tex. Respondents are now, and for more than 1 year last past have been, engaged in the manufacture and processing of salted nuts, salted peanuts, and peanut confections, 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. Said respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Dallas, Tex., to purchasers thereof in the State of Texas and in the 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 nuts, salted peanuts, and peanut confections 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 with corporations and individuals engaged in the manufacture of salted nuts, salted peanuts, peanut confections and 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 assortments of salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Said assortments of salted peanuts are composed of a number of small sealed cartons of salted peanuts which retail to the ultimate consumer at 5 cents per carton. These assortments are designated by respondents as "Believe-It-Or-Not." Sealed within a small number of the 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 in some of said assortments have lithographed or printed thereon the following language: "You may find 5¢, 25¢, 50¢, or $1." With such assortments respondents furnish a display card for use by the retail dealers in offering such assortments to the public, which display card bears legends or statements informing 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 respondents sell their said assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale and sell said salted nuts, salted peanuts, or peanut confections 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 the capacity and tendency of inducing 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 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. 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on October 30, 1936, issued and served its complaint in this proceeding upon the respondents, William P. Bennett and Charles C. Bennett, and on August 4, 1937, issued and served its amended and supplemental complaint upon the respondents, William P. Bennett and Charles C. Bennett, 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, no answer having been filed by the respondents, 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 to the allegations of the complaint by Walter L. Barlow and LaVergne Guinn, attorneys for the respondents, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; after the issuance of the amended and supplemental complaint,

and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said amended and supplemental complaint were introduced by J. J. Smith and Edward W. Thomerson, attorneys for the Commission, and in opposition to the allegations of the amended and supplemental complaint by Harry I. Freedman and Franklin E. Spafford, attorneys for the respondents, and by Charles C. Bennett, pro se, before W. W. Sheppard and Arthur F. Thomas, trial examiners 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 complaint, the amended and supplemental complaint, answer to the amended and supplemental complaint, testimony and other evidence, brief in support of the complaint and said amended and supplemental complaint, respondents not having filed brief 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. Respondents, William P. Bennett and Charles C. Bennett, are copartners, doing business under the trade name Peanut Novelty Co., with office and principal place of business located at 1615 North Prairie Avenue, Dallas, Tex. Since 1930, they have been engaged in the business of manufacturing or processing, roasting, and packaging peanuts, and in the sale and distribution thereof to wholesalers, jobbers, wagon peddlers, and retail dealers.

PAR. 2. Respondents cause, and have caused, their products, when sold, to be transported from their principal place of business in the city of Dallas, Tex., to the purchasers thereof in the State of Texas and in Arkansas and other States of the United States at their respective places of business.

PAR. 3. In the course and conduct of their business, respondents are, and for more than 2 years last past have been, in substantial competition with other partnerships, and with corporations and individuals engaged in the manufacture or processing, roasting, and packaging of peanuts and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 4. Respondents advertise their products through a display card furnished to the retail dealer for his use and by statements

printed on the container of the individual unit for sale to the ultimate consumer. Among the representations so made, are the following:

BELIEVE IT OR NOT!

5¢ Lucky 5¢
Peanuts

Toasted and salted, Crisp and Delicious
Try Your Luck
You May Find

5¢, 25¢, 50¢ or $1.00
As Advertisement

Peanut Novelty Co., 1615 Prairie Avenue, Dallas, Texas.

"Believe it or not" Peanuts Toasted and salted Crisp and Delicious	You may find— 5¢, 25¢, 50¢ or $1.00
Peanut Novelty Co., 1615 North Prairie, Dallas.	Net wt., 1 oz., or over.

* * * * * * *

Believe it or not Peanuts Peanut Novelty Co. 1615 N. Prairie, Dallas.	(?) (?) (?) Toasted and salted Crisp and Delicious Net wt. 1 oz. or over.

PAR. 5. In the course and conduct of their business, respondents sell, and have sold, to wholesale and retail dealers salted peanuts packaged and assembled as follows: Peanuts for sale to the ultimate consumer at 5 cents per unit are packaged 1 ounce or over in an individual container and these containers are packaged for sale and distribution to the wholesaler 30 to the carton. Each carton of 30 containers has a minimum of 2 nickels or a maximum of 7 nickels placed in certain unidentifiable containers, in addition to the peanuts therein, for resale to the ultimate consumer. Then every sixth carton that goes out of the factory has a quarter and 2 nickels in certain units. If the quarter is not put in the sixth carton, then seven nickels will be run in that carton; or every twelfth carton will contain 2 nickels and one 50-cent piece; or every twenty-fourth carton contains 2 nickels and a dollar bill. In other words, there is a definite amount of money included in every 24 cartons. The prizes run from a nickel to a dollar, every 24 cartons containing $3.40 in money, distributed in certain 5-cent packages, and the remainder of the individual 5-cent packages in the carton contain nothing except peanuts.

PAR. 6. The customer who purchases a 5-cent package of respondents' "Believe It Or Not" peanuts has no knowledge prior to open-

ing the package whether the package will contain peanuts only or peanuts and the prize money.

PAR. 7. The question mark and the three blue figures on the display card and on the peanut containers refer to only one thing—the prize money actually placed in the containers. It was respondents' goal to so pack the money in the container that the customer could not determine which package contained the prize money and the system of packing had been so well worked out that the ultimate consumer keeps playing with them to get the money prize. It would have a detrimental effect on these sales if the money could not be distributed in the packages and customers and prospective customers were informed that various packages of said peanuts contained money.

PAR. 8. Respondents' sale and distribution of peanuts, as set forth in these findings, constitutes a lottery scheme, game of chance, or gambling method, and encourages gambling among those who are enticed by the element of chance to purchase such packaged peanuts in preference to purchasing packaged peanuts which do not contain prizes. This method of sale of "Believe It Or Not" peanuts is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 9. The wholesale dealers and jobbers to whom respondents sell their "Believe it or Not" peanuts resell the same to retail dealers, and said retail dealers, and the retail dealers to whom respondents sell direct, expose said assortments for sale, and sell said "Believe It or Not" peanuts to the purchasing public in accordance with the aforesaid sales plan. The jobber, wholesaler, and retail dealer know which particular cartons of peanuts contain the quarters, 50-cent pieces, or dollars, the quarters being indicated by a "Q" on the outside of the yellow carton or lid in pencil, "H" for half-dollars, and "D" to indicate which ones contain the dollar. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their product "Believe it or Not" peanuts in accordance with the sales plan hereinabove set forth.

PAR. 10. Certain of said competitors of respondents are unwilling to adopt and use said method described above 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. 11. Many dealers in, and ultimate purchasers of, packaged peanuts are attracted by respondents' said method and manner of packing said peanuts, and by the element of chance involved in the sale thereof in the manner above described, and are, thereby, induced

to purchase said peanuts so packed and sold by respondents, such method having the tendency and capacity to eliminate from said trade all actual competitors, and exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method. The use of said method by respondents as aforesaid has had, and now has, the tendency and capacity to, and did, and does, unfairly divert trade and custom to themselves from their competitors who are unwilling to, and do not, use the same or an equivalent method in the sale and distribution of their peanuts, and deprives the purchasing public of the benefit of free competition in said trade.

CONCLUSION

The aforesaid acts and practices of the respondents William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., 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 TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint and the amended and supplemental complaint of the Commission, the answer of respondents to the amended and supplemental complaint, testimony and other evidence taken before Miles J. Furnas, W. W. Sheppard, and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and the said amended and supplemental complaint and in opposition thereto, brief of counsel for the Commission (counsel for respondents having filed no brief and 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 the Federal Trade Commission Act.

It is ordered, That the respondents, William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., or under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of peanuts or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing peanuts or any other merchandise so packed and assembled that sales of said peanuts or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery.

2. Supplying to, or placing in the hands of others, assortments of peanuts or any other merchandise which said assortments are to be used, or may be used, without alteration or rearrangement of the contents thereof to conduct a game of chance, gift enterprise, or lottery in the sale or distribution of said peanuts or other merchandise contained in said assortments to the general public.

3. Selling or distributing individual packages of peanuts or any other merchandise containing coins or other United States money which said individual packages of said peanuts or other merchandise are packed and assembled in assortments with other individual packages of said peanuts or other merchandise of similar size, shape and appearance not containing coins or other United States money, for resale to the general public by means of a sales plan which constitutes a game of chance, gift enterprise, or lottery.

4. Furnishing to dealers a display card or other printed matter either with packages or assortments of peanuts or any other merchandise, or separately, which said display card or other printed matter bears a legend or legends or statements informing the purchasers of said peanuts or other merchandise that the same is being sold to the general public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Selling or otherwise disposing of any merchandise by means of a lottery, gaming device, or gift enterprise.

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

GREAT BRITAIN SPIRITUALIST CHURCH, AND MRS. CHARLES P. COLBERT, VIRGIL L. ECKRIDGE, MARY HOPKINS, DELMAR WILLIAM WHITE, AND FANNIE H. ECKRIDGE

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

Docket 3474. Complaint, July 8, 1938—Decision, Sept. 7, 1939

Where a corporation and four individuals, officers, and members thereof and in charge of its affairs, and, acting in cooperation with one another, engaged in sale and distribution of so-called holy oils, books, tracts, talismans, charms, soap, perfumes, and other similar products, to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of soaps, oils, perfumes, tracts, guides and similar products in commerce as aforesaid;

In advertising their said products in newspapers published in many cities, in which reader was informed that advertiser had "good news" for him which would "solve all problems," and in letters and pamphlets descriptive of the nature of their work, items and prices sent to those replying, and through catalogs dealing with particular items offered, and purporting to deal, among other things, with "Rare Oils, Incense and Perfume from India and Africa"—

(*a*) Represented, directly and through inference, that the products described and offered were made from substances imported from Africa and India, and that said products were possible because of revelations made manifest to them by some mystic power which had revealed the secrets of nature; and

(*b*) Represented that there was being conveyed to the purchaser the power to cure sickness or induce health, wealth, happiness, and love, and that the articles themselves possessed magical influences and power due to asserted origin of ingredients thereof in jungles of Africa and India;

Facts being they did not operate a factory or laboratory in which any of their said products were made or produced, all of said products were purchased in the American city in which was located their principal office and place of business, and said various products, as above set forth, did not find their source or origin in India or in tribes of India, or with African tribes or in said countries, or have any such qualities as attributed thereto, and were not made by secret process or with mystic power to ward off evil spirits, have lucky effect on dice, etc.

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence of such erroneous belief, that number of consuming public purchased substantial volume of their said products and trade was diverted unfairly to them from competitors engaged in sale and distribution of soaps, perfumes, oils and similar products as aforesaid:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. R. A. McOuat* for the Commission.

Cobb, Howard & Hayes, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Great Britain Spiritualist Church, a corporation, and Mrs. Charles P. Colbert, Virgil L. Eckridge, Mary Hopkins, Delmar William White, individually and as officers, directors, and agents of said corporation, and Fannie H. Eckridge, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Great Britain Spiritualist Church, is a corporation for profit organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its offices and principal place of business located at 545 Owen Avenue, Detroit, Mich. Respondents, Mrs. Charles P. Colbert, Virgil L. Eckridge, Mary Hopkins, and Delmar William White are officers, directors, and agents of said corporation. Respondent, Fannie H. Eckridge, is an individual closely associated and connected with said respondent corporation and said respondent individuals.

Said respondents act and have acted together, and in cooperation with each other in carrying out the acts, practices, and methods hereinafter alleged.

PAR. 2. Respondent corporation, Great Britain Spiritualist Church, and respondent individuals Mrs. Charles P. Colbert, Virgil L. Eckridge, Mary Hopkins, Delmar William White, and Fannie H. Eckridge have been for more than 1 year last past and are now engaged in the business of selling and distributing books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soap, perfumes, oils, and similar products. Said respondents cause and have caused their said products when sold, to be transported from their principal place of business in Detroit, Mich., to purchasers thereof located at points in the various States of the

United States other than the aforesaid State of Michigan and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained a course of trade in said products so sold and distributed by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in active and substantial competition with corporations, partnerships, and individuals likewise engaged in the sale and distribution of books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soaps, perfumes, oils, and like products.

PAR. 3. In the course and conduct of said business, respondents, for the purpose of inducing the purchase of their said books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soaps, perfumes, oils, and similar products offered for sale and sold by them, have published and circulated to prospective customers throughout the United States and in the District of Columbia, by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature containing false and misleading statements and representations. Among such false and misleading statements and representations are the following:

I am in possession of the most wonderful panacea for health, success and happiness in the world today. This method was revealed to me, and to make a profit on it would be unjust. Therefore, I am offering it to you and my many clients at a small cost of only $2.75.

You have been so kind to me and started me on the road to health and success. My husband has received a job and will start tomorrow.

Since you accepted my case I have been called here to pastor a church, in which I feel that your working for me played a great part and I trust you will not cease until I am a complete success.

If my system fails, don't ever expect to be happy!

Many of your neighbors have already learned how to control this new source of power. They are getting What They Want. Sick folks are getting well; the discouraged are beginning to fight again, the lonesome and love-hungry are finding welcoming arms and responsive hearts. Older folks are renewing life and securing their desires. Women, farmers and home-folks are discovering that the big thrills of life are theirs too. The ambitious are absolutely amazed at their success. Salesmen are doubling their sales. Executives are suddenly mastering their problems and business owners are starting amazing profits. Folks are suddenly getting what they have longed for, be it the solution of a domestic problem, a new position, an increase in salary, or even a specific material, such as an automobile. What is the explanation?

Now as soon as I receive your Money Order for $2.00 I shall immediately send you, by return mail, just what has before made so many successful, with full instructions how to use it. Remember, regardless of what I send you now, I must concentrate with you daily. Your friends are using it Now.

I will work with you personally.

* * * I shall give your work my Personal attention. The price $21.50. Now I don't want you to pay me cash; send me $8.00 and I shall send you everything you ask for at once * * * Yours for success. Rev. Mrs. Charles P. Colbert.

Grendeline Holy Oil.—It is said the Sibber Tribes of India used Holy Oil in all important undertakings, believing this Oil would aid them in success. Prince Sibber never believed in failure. We offer you Grendeline Holy Oil * * * Price per bottle $1.00.

Jungles Floor Wash.—Floor Wash have been used for many many years by the tribes of Africa. They regard it as their most important weapon for fighting Evil conditions. We recommend Jungles Floor Wash for your consideration. * * * Price per bottle $1.25.

Capo Perfume.—There have been Vampires of all nationalities. One of the most outstanding of all times was a bewitching Belle from the Jungles of Africa. Her name was Capo. Her alluring power over men is said to have been attributed to her use of rare perfumes. We offer Capo Perfume for your approval. * * * Extracted from Capo Rose * * * Price per bottle $1.25.

If you have been worried about numbers that won't fall if you can't catch, you should send at once for the "Goddess of Numbers" * * * Price $1.25 cents.

Pow-Wow Mojou.—We Guarantee everyone to be made with Genuine Mazuza Sealed in tin then sewed in leather. Also contains genuine parchment. Contains genuine the secret of dove blood Hells-Trom Mojou has with in the law for man to follow. It has been said by millions to be the greatest luck talisman for man to follow ever made. One will last a lifetime, made to fit right in your purse. No one will know what it is.

Why take chances, it may bring to you Health, Wealth and Happiness. Price per Mojou, $12.50.

Now at last Dr. Colbert has purchased the secret from Mother Sibber and he alone knows this secret.

It is now believed by thousands that if they will have with them luck in all kinds of games. The big men who play games of chance in Monte Carlo would tell of how they have wished for Fox Fire Powder. Those who have it, sew it in Red Flannel Cloth and keep it with them at all times. Now it is yours.

Mintolean Mojou Lucky Oil.—Millions say it's the greatest luck oil known to mankind. Dice soaked in Mintolean over night is said to be lucky.

$2.50 discount $2.50.

This coupon and $1.25 mailed to Dr. Colbert will bring to you a complete set of Ethiopia Rosarium Blessed Beads * * *.

Not only will you receive guidance and counsel for the year, but I will enclose in my master reading a complete analysis of your life as to character and vocational pursuits. YOU will learn what you are best adapted for in order to make the greatest success in life.

$1.00 Special Offer $1.00.

This coupon, properly filled out, and only $1.00 entitled you to a complete $5.00 Astrological Forecast and extensive Reading based on your date of birth.

What do you know about Miracles? Do you believe in them? They still happen! You can look the world in the face. Solve All Problems—Get What You Want and Fear No Man or Circumstances.

Nobody is too poor—No job is too big—No burden is too heavy—No home is too unhappy to be perfected—Love affairs may be reconstructed by this scientific method of securing Peace, Happiness and Plenty.

This prayer was found on the grave of our Lord Jesus Christ in the year of our Lord 1550, and sent from the pope to the Emperor Charles as he was going to battle for his safety.

Now Comes This Free Advice.

Do you wonder why some homes are happy, never no discontentment and always lucky, peace, happiness and plenty. Thousands will say that they give this credit to Dr. Colbert's House Dressing Balls; and they will say to you, never would I be without one.

Green Dragon Liquid Soap. For Shaving or shampoo face or hands you will know for yourself why we call this Mystic Soap a secret. * * * Price per bottle $1.25.

The aforesaid statements and representations, together with other statements and representations not herein set out, serve as representations on the part of the respondents that respondents' said books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, and other literature are revelations made manifest to respondents by some mystic power, revealing the secrets of nature, and that the study and use of the information revealed therein will bestow power in the reader to produce or restore health, wealth, happiness, and good luck, and that the prices at which respondents advertise and sell said several products are special, discount or reduced prices and are not the regular prices at which said products are sold; that the respondents' said products: Grendeline Holy Oil, at the price of $1 per bottle; Mintolean Mojou Lucky Oil, at the price of $2 per bottle; Jungles Floor Wash, at the price of $1.25 per bottle; Jungles Incense, at the price of $1 per bottle; Fox Fire Powder, at the price of $3 per box; Capo Perfume, at the price of $1.25 per bottle; Dr. Colbert's House Dressing Balls, at the price of $1.25 each; Ethiopia Rosarium Blessed Beads, at the price of $1.25 per set; and Pow-Wow Mojou Talisman, at the price of $12.50 each, possess some magic health or luck producing power and will ward off sickness and induce health, wealth, happiness, and good luck to users thereof, and that respondents' said Capo Perfume possesses some magnetic power of influence and attraction and is made from Capo roses imported from the jungles of Africa, and further, that some or all of said products are imported by respondents from India or Africa; that respondents' said Green Dragon Liquid Soap sold by respondents at the price of $1.25 per bottle is a soap of a superior quality made from some secret process, manufactured, compounded, or made by respondents, and that it possesses some mystic influence; and that the prices at which respondents advertise and sell their said several products are special, discount, or reduced prices.

PAR. 4. In truth and in fact, respondents do not maintain or operate any factory, laboratory, or institution in which any of their said products are manufactured, compounded, or produced. Respondents' various courses of instructions as contained in said books, pamphlets, tracts, astrological forecasts, "Goddess of Numbers Guide," and other literature are not mystic spiritual revelations and do not give complete instructions in the magical, spiritual arts, and are not complete courses in educational, religious, and spiritual development, nor do they equip the purchasers and users thereof with the power to accomplish the many results claimed for them by respondents. Respondents' said products are not panaceas for health, wealth and happiness, and will not cure sickness or induce health, wealth, happiness, and luck. Respondents' said products: (*a*) Grendeline Holy Oil is not a product of the Sibber tribes of India, and will not assure the users thereof health, wealth, happiness, and success; (*b*) Mintolean Mojou Lucky Oil is not a product of African tribes or of foreign countries, and will not produce luck or have any effect on dice soaked in it; (*c*) Jungles Floor Wash is not a product of the jungles of Africa and does not ward off evil spirits, evil influences, and evil conditions; (*d*) Jungles Incense is not a product of the jungles of India, and does not hold or reveal numerology numbers, and will not produce peace, happiness, and plenty; (*e*) Fox Fire Powder is not a product of the Sibber tribes of India, is not manufactured from secret processes, and will not produce luck or success; (*f*) Capo Perfume is not made from Capo roses or imported from African jungles, and does not possess any mystical or magical influence or power; (*g*) Dr. Colbert's House Dressing Balls will not always produce luck, peace, happiness, and plenty, or banish discontent; (*h*) Ethiopia Rosarium Blessed Beads are not imported from Ethiopia and will not produce any blessing; (*i*) Pow-Wow Mojou Talismans are not luck producing and will not bring health, wealth and happiness to the purchasers and users thereof; (*j*) Green Dragon Liquid Soap is not made by respondents from a secret process and does not possess any mystic power or magical influence. The said several prices at which respondents advertise and sell said books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soaps, perfumes, oils, and like products are not special, discounted, or reduced prices, but are the regular retail price at which respondents usually sell said books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soaps, perfumes, oils, and like products.

PAR. 5. There are among respondents' competitors many who sell and distribute books, pamphlets, tracts, guides, courses of instruction,

astrological forecasts, and other literature, and who manufacture, make, produce, or import and sell soaps, perfumes, oils, talismans, ornaments, and charms, who do not represent their said writings as being divine or mystical revelations, or claim that they are complete, effective courses of instruction revealing the mystic secret source of health, wealth, happiness, and luck, or who do not in any way misrepresent their writings or courses of instruction; and who do not in any way misrepresent the source, quality, nature, price, and effect of their respective products, and who do not misrepresent the terms and conditions under which their writings, courses of instruction and products are sold.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents in describing their said products as hereinabove set out, was, and is calculated to and has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' said products with the result that trade has been diverted unfairly to respondents from competitors engaged in the business of selling and distributing books, pamphlets, tracts, guides, courses of instruction, astrological forecasts, talismans, charms, soaps, perfumes, oils, and similar products in said commerce who do not misrepresent the nature, quality, value and effect of their said products. As a result thereof injury has been done, and is now being done, by respondents to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 8, 1938, issued its complaint in the above-entitled proceedings, and caused the same to be served upon respondents Great Britain Spiritualist Church, Mrs. Charles P. Colbert, Virgil L. Eckridge, Mary Hopkins, and Delmar William White, charging them with the violation of the provisions of the said act. Each of said respondents entered an appearance and filed an answer to the complaint. Thereafter, to wit, on February 16,

1939, testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McOuat, attorney for the Commission, before A. F. Thomas, a trial examiner of the Commission, which 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, respondent not having filed brief, 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 Great Britain Spiritualist Church is a corporation organized and existing under and by virtue of the laws of the State of Michigan, relating to ecclesiastical corporations. It maintains its principal office and place of business activities in Detroit, Mich. Respondents Mrs. Charles P. Colbert, also named herein as Fannie H. Eckridge, Virgil L. Eckridge, Mary Hopkins, and Delmar William White, are individuals, and officers and members of said corporation, and in charge of its affairs. The individual respondents and the corporate respondent, acting in cooperation with each other, are engaged in the sale and distribution of so-called holy oils, books, tracts, talismans, charms, soap, perfumes, and other similar products. Respondents cause said products, when sold, to be transported by mail from their place of business in Detroit, Mich., to purchasers thereof, some located in the State of Michigan, and others located in various other States of the United States and the District of Columbia. There is now and has been for some time last past a course of trade and commerce by said respondents, in said products, between and among various States of the United States and the District of Columbia. In the course and conduct of their business, the respondents are in competition with other corporations, firms, and individuals likewise engaged in the sale and distribution of soaps, oils, perfumes, tracts, guides, and similar products in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, and in the distribution of their products, as described in paragraph 1 hereof,

respondents cause to be published in newspapers in many and various cities in the United States the following advertisements:

Can You Keep A Secret?
I have good news for you.

Regardless of what your trouble may be, you can look the world in the face; solve all problems; get what you want and fear no man or circumstance. Your happiness and success demand that you print your name clearly and send it to Rev. Charles P. Colbert, Detroit, Mich., 545 Owen Avenue.

To those who respond to the advertisements, respondents mail various letters and pamphlets descriptive of the nature of their work and the items for sale, with prices therefor. In addition to the leaflets respondents issue and mail a catalogue of the concrete items of merchandise offered for sale, which contains statements as follows:

Rare Oils, Incense and Perfume from India and Africa.

Grendeline Holy Oil.—It is said the Sibber Tribes of India used Holy Oil in all important undertakings, believing this Oil would aid them in success. Prince Sibber never believed in failure. We offer you Grendeline Holy Oil * * * Price per bottle $1.00.

Jungles Floor Wash.—Floor Wash have been used for many many years by the tribes of Africa. They regard it as their most important weapon for fighting Evil conditions. We recommend Jungles Floor Wash for your consideration. * * * Price per bottle $1.25.

Capo Perfume.—There have been Vampires of all nationalities. One of the most outstanding of all times was a bewitching Belle from the Jungles of Africa. Her name was Capo. Her alluring power over men is said to have been attributed to her use of rare perfumes. We offer Capo Perfume for your approval. * * * Extracted from Capo Rose * * * Price per bottle $1.25.

If you have been worried about numbers that won't fall, if you can't catch, you should send at once for the "Goddess of Numbers" * * * Price $1.25 cents.

Pow-Wow Mojou.—We guarantee everyone to be made with Genuine Mazuza Sealed in tin then sewed in leather. Also contains genuine parchment. Contains genuine the secret of dove blood Hells-Trom Mojou has with in the law for man to follow. It has been said by millions to be the greatest luck talisman for man to follow ever made. One will last a lifetime, made to fit right in your purse. No one will know what it is.

Why take chances, it may bring to you Health, Wealth, and Happiness. Price per Mojou, $12.50.

Now at last Dr. Colbert has purchased the secret from Mother Sibber and he alone knows this secret.

It is now believed by thousands that if they will keep Fox Fire Powder with them they will have with them luck in all kinds of games. The big men who play games of chance in Monte Carlo would tell of how they have wished for Fox Fire Powder. Those who have it, sew it in Red Flannel Cloth and keep it with them at all times. Now it is yours.

Mintolean Mojou Lucky Oil.—Millions say it's the greatest luck oil known to mankind. Dice soaked in Mintolean over night is said to be lucky.

Do you wonder why some homes are happy, never no discontentment and always lucky, peace, happiness and plenty. Thousands will say that they give this credit to Dr. Colbert's House Dressing Balls; and they will say to you, never would I be without one.

Green Dragon Liquid Soap.—For Shaving or shampoo face or hands you will know for yourself why we can call this Mystic Soap a secret. * * * Price per bottle $1.25.

PAR. 3. The statements to the effect that the foregoing products are made from substances imported from Africa and India, combined with inferences drawn therefrom, serve as representations that the products are possible because of revelations made manifest to respondents by some mystic power which has revealed the secrets of nature, and that there is being conveyed to the purchaser the power to cure sickness or induce health, wealth, happiness, and love; further, said statements produce the representation that the articles themselves possess magical influences and power, due to the statement that the ingredients of respondents' products originated in the jungles of Africa and India.

PAR. 4. Respondents do not operate a factory, or laboratory in which any of the said products are manufactured or produced. All of their products are purchased in Detroit; "Grendeline Holy Oil" is not a product of the Sibber Tribe of India; "Mintolean Mojou Lucky Oil" is not a product of African tribes, and will not have any effect on dice soaked in it; "Jungles Floor Wash" is not a product of the jungles of Africa and does not ward off evil spirits; "Fox Fire Powder" is not a product of the Sibber Tribe of India, and is not made by respondents from a secret process and does not possess any mystic power. None of said products will cure sickness or induce health, wealth, happiness or love.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondents in describing the said products as hereinabove set out were and are calculated to, and have had, and now 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 all of said representations are true. As a result of this erroneous belief, a number of the consuming public have purchased a substantial volume of respondents' said products with the result that trade has been diverted unfairly to respondents from competitors engaged in the business of selling and distributing soaps, perfumes, oils, and similar products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public, and of competitors of respondents, and constitute an unfair method 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 respondents, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of counsel for the Commission in support of the complaint, respondents having waived oral argument and not having filed brief, 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 Great Britain Spiritualist Church, a corporation, and respondents Mrs. Charles P. Colbert, Virgil L. Eckridge, Mary Hopkins, and Delmar William White, individually and as officers, directors, and agents of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their various items of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by inference, that their products or the substances from which they are made or compounded are imported from Africa or India when such is not the fact; or that said products possess any mystic or secret power of nature to cure sickness or induce health, wealth, happiness, or love, or possess any mystic influence or power due to their source of origin.

2. Representing (*a*) that "Grendeline Holy Oil" or "Fox Fire Powder" are products of the Sibber Tribe of India, or that "Fox Fire Powder" is made from a secret process or possesses mystic power; (*b*) That "Mintolean Mojou Lucky Oil" is a product of African tribes or will have a lucky effect on dice soaked in it; (*c*) that "Jungles Floor Wash" is a product of the jungles of Africa or will ward off evil spirits.

3. Representing in any manner that respondents manufacture, make, compound, distill, or rectify any product sold and shipped by them in commerce unless and until they own and operate or directly and absolutely control the factory or plant wherein such articles are made, manufactured, compounded, distilled, or rectified by them.

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

ZENDEJAS PRODUCTS CORPORATION, AND JOSE SILVA, TRADING AS ZENDEJAS 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 3679. Complaint, Dec. 28, 1938—Decision, Sept. 7, 1939

Where a corporation and an individual, who was secretary and manager thereof and controlled and directed its business activities, sales policies and practices, engaged in sale and distribution of certain medical preparations designated as "Zendejas Medicine" and "Zendejas Ointment," to members of purchasing public in various States; in advertisements which they disseminated through the mails, in newspapers and periodicals of general circulation, and through circulars and other printed matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extrastate audience—

(*a*) Represented that said "Zendejas Medicine" contained well-known curative qualities of many plants, barks, and roots, and contributed to the purification of the blood, and was an alterative for the digestive system which promoted formation of new and healthy elements, regulated circulation of the blood, prevented blood clots, and eliminated useless and noxious elements therefrom;

(*b*) Represented, as aforesaid, further, that it was a cure and remedy for all ailments for which an iodized medicine could be prescribed, and for rheumatism, through clearing blood of noxious matter, and that it was of great value in treatment of gout and arthritis, and that millions of rheumatics recommended its use;

Facts being it did not, as aforesaid claimed, contain well-known curative qualities of plants, barks, and roots, or contribute to purifying the blood, was not an alterative for general digestive system which aided said system as aforesaid claimed, did not regulate circulation of the blood or accomplish other results above set forth, and was not a cure or remedy for all ailments for which iodized medicine could be prescribed, nor for rheumatism, and was not great remedy in treatment of gout or arthritis, nor recommended by millions of rheumatics;

(*c*) Represented, as aforesaid, that their said "Zendejas Ointment" was a competent and efficient treatment for, or would cure, eczema, rash, and other skin diseases, and would give immediate relief to sufferers therefrom and cause such eruptions to disappear;

Facts being it was not a competent or effective treatment for such ailments and conditions, nor of substantial therapeutic value in treatment thereof, nor remedy thereof, and would not accomplish results claimed as above set forth; and

(*d*) Failed to reveal to purchasers and prospective purchasers of their preparations, in the course and conduct of their business, that indiscriminate use thereof by the uninformed might cause them to suffer irreparable and perhaps fatal injury by reason of fact that their said medicine was composed essentially of senna and potassium iodide, and danger to public in

indiscriminate use of iodides which might cause great harm to those afflicted with latent tuberculosis and toxic goiter, and by reason of presence in said ointment of dangerous drug and ingredient "Betanaphthol," which should be used only under physician's supervision, due to special irritant action on kidneys and fact that severe neuritis has been caused by absorption from skin of said drug, which is especially contraindicated in presence of renal disease;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that their said preparations possessed properties claimed and represented, and would accomplish results as aforesaid, and of causing portion of such public, by reason of such belief, to purchase the same and thereby divert trade unfairly to them from their competitors in commerce who truthfully advertise the effectiveness in use of their products; to the substantial injury of competitors in commerce:

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

Mr. J. C. Kash for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Zendejas Products Corporation, a corporation, and J. Silva, an individual trading as Zendejas Products Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Zendejas Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 200 West Fifty-first Street, Los Angeles, Calif.

Respondent J. Silva, is an individual trading as Zendejas Products Co. and is also secretary and manager of said respondent, Zendejas Products Corporation, and controls and directs the business activities, sales policies, and practices of respondent corporation and has his office and place of business at the same address, to wit, 200 West Fifty-first Street, Los Angeles, Calif.

Said respondents have acted in concert and in cooperation with each other in performing the acts and practices hereinafter alleged.

Par. 2. The respondents are now and have been for more than 1 year last past engaged in the business of selling and distributing

certain medicinal or pharmaceutical preparations designated as "Zendejas Medicine" and "Zendejas Ointment." Respondents sell said preparations to members of the purchasing public situated in various States of the United States and cause the said preparations, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparations among and between 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 in active and substantial competition with other individuals and corporations and with partnerships engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of medicinal preparations designed and intended for and used in the treatment of the ailments and conditions of the human body, for which responents recommend the use of their said preparations. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations, or the threapeutic properties thereof, and who do not make false and misleading statements in connection with the sale and distribution of their preparations and products.

PAR. 4. In the course and conduct of their aforesaid business, the respondents have disseminated, are now disseminating, and have and do now cause to be disseminated, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the respondents' said medicinal preparations. Said false advertisements were, and are, disseminated by use of the United States mails; by insertion in newspapers, and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners thereto located in the various States of the United States other than the State from which said broadcasts originate. Various means have been, and are, used by respondents to disseminate or cause the dissemination of said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondents' said medicinal preparations. The greater part of such advertisements are disseminated by

the respondents in the Spanish language. The list of advertisements quoted below are English translations of the advertisements actually disseminated, as aforesaid. Among, and typical of, the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

ZENDEJAS MEDICINE

It is a medical compound that contains the active principles of many plants, barks and roots, whose curative qualities have been well known since remote times.

It contributes to the purification of the blood and works as an alterative for the general digestive system, increases metabolism and transforms the organic functions. Therefore it promotes the formation of new and healthy elements.

It has a dilatory action on the arteries, which activate and regulate the circulation of the blood to the outer surface and the tissues and aids in preserving the natural fluids of the blood, prevents formation of small blood clots (thrombosis and embolisms) that obstruct the arteries. Because of its diaphoretic and diuretic action and its resolvent and smooth laxative qualities, it throws off on the surface the useless and noxious elements. In general it is indicated for all ailments for which an iodized vegetable medicine could be prescribed.

It can be practically demonstrated that an iodized medicine is of great value for this universal ailment (rheumatism). Zendejas Medicine combines the qualities of an iodine preparation with the benefits of vegetable elements that go so well with the iodides.

RHEUMATC PAINS

Gout Arthritis

If you are a victim of the tortures of this disease, especially during the winter, remember that millions of rheumatics recommend the incomparable Mexican remedy

ZENDEJAS

Zendejas is a valuable remedy against rheumatism because you attack the trouble at its true origin, clear the blood of the noxious matter which causes it.

Aids digestion and renews vigor.

POMADA ZENDEJAS
(Zendejas Ointment)

And for many reasons it can be remembered for its use, because of its marvelous results in eczema, rash, ringworm, itching, and other affections are some of the things which cause you to always remember it * * *.

SKIN DISEASES

You don't have to suffer from diseases like eczema, ringworm and other skin irritations, many of them repulsive, that prohibit from all social contact. Remember that

POMADA ZENDEJAS

is an efficacious remedy, easy to apply * * *.

SKIN ERUPTIONS

Many eruptions are very painful, others produce desperate itching. There are others that, if they aren't painful, like eczema and psoriasis, are at least nuisances and have a disagreeable appearance.

LA POMADE ZENDEJAS

gives immedite relief, soothes the itching quickly and when the eruptions can't be traced to any specific diseases, it makes them disappear * * *.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set-out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' products, respondents have represented, and do now represent, directly and indirectly, that respondents' preparation, "Zendejas Medicine" contains well-known curative qualities of many plants, barks and roots; that it contributes to the purification of the blood; that it is an alterative for the general digestive system; that it promotes the formation of new and healthy elements; that it regulates the circulation of the blood and prevents blood clots; that it eliminates useless and noxious elements from the system; that it is a cure or remedy for all ailments for which an iodized medicine could be prescribed; that it is a cure or remedy for rheumatism because it clears the blood of noxious matter; that it is of great value in the treatment of gout and arthritis; that millions of rheumatics recommend its use; that "Zendejas Ointment" is a competent and effective treatment for, or will cure eczema, rash, ringworm, itching, and other skin diseases; that it is a cure or remedy for skin diseases; that its use gives immediate relief to sufferers of skin eruptions and causes such eruptions to disappear.

PAR. 6. The aforesaid representations and claims used and designated by the respondents, as hereinabove described, are grossly exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, respondents' "Zendejas Medicine" does not contain the well-known curative qualities of many plants, barks, and roots. It does not contribute to the purification of the blood, is not an alterative for the general digestive system, and does not promote the formation of new and healthy elements. Said preparation does not regulate the circulation of the blood, nor prevent blood clots and does not eliminate useless and noxious elements from the system. This preparation is not a cure or remedy for all ailments for which an iodized medicine could be prescribed. It is not a cure or remedy for rheumatism and does not clear the blood of the noxious matter that causes same. It is not of great value in the treatment of gout or arthritis. Millions of rheumatics do not recommend the use of this preparation.

Respondents' preparation "Zendejas Ointment" is not a competent or effective treatment for, nor will it cure or be of substantial therapeutic value in the treatment of, eczema, rash, ringworm, itching, and other skin diseases. It is not a remedy for skin diseases and its use does not give immediate relief to sufferers of skin eruptions and cause such eruptions to disappear.

Respondents' claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value or efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly the purchase of medicinal preparations containing drugs.

The formula of "Zendejas Medicine" shows that it is composed essentially of cassa augustifolia (senna) and potassium iodide. The indiscriminate sale of iodides to the public is dangerous and may cause great harm to persons afflicted with latent tuberculosis and toxic goiter.

The "Zendejas Ointment" contains the dangerous ingredient "Betanaphthol" and should be used only under a physician's supervision as it has a special irritant action on the kidneys, and severe nephritis has been caused by its absorption from the skin, and is especially contraindicated in the presence of renal disease.

In the course and conduct of their business, the respondents do not disclose to purchasers and prospective purchasers of their preparations that the indiscriminate use of said preparations by the uninformed may cause them to suffer irreparable and perhaps fatal injury.

PAR. 8. The use by respondents of the foregoing false, receptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medicinal preparations 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 and mistaken belief that such false statements, representations, and advertisements are true and that respondents' said preparations possess the properties claimed and represented and will accomplish the results represented and causes a portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said preparations. As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness and use of their respective products. In consequence 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. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and the respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of December 1938, issued, and on January 3, 1939, served, its complaint in this proceeding upon respondents Zendejas Products Corporation, a corporation, and Jose Silva, an individual trading as Zendejas Products Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 Zendejas Products Corporation is a corporation organized, existing, and doing business under the laws of the State of California, with its principal office and place of business at 200 West Fifty-first Street, Los Angeles, Calif. The respondent, Jose Silva, is an individual trading as Zendejas Products Co. He is also secretary and manager of said corporation and controls and directs the business activities, sales policies, and practices of respondent corporation. His office and place of business is also at 200 West Fifty-first Street, Los Angeles, Calif. Said respondents have acted in concert and in cooperation with each other in performing the acts and practices hereinafter stated.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of selling and distributing certain medical preparations designated as "Zendejas Medicine" and "Zendejas Ointment." Respondents have sold said preparations to members of the purchasing public situated in various States of the United States, and have caused the said preparations, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof located in the other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents have been and are in active and substantial competition with other individuals, corporations, partnerships, and firms engaged in the sale and distribution of medical preparations designed and intended for and used as treatments for the ailments and conditions of the human body for which respondents recommend the use of their said preparations. Among such competitors in said commerce are many who do not in any manner misrepresent their medical preparations or the therapeutic properties thereof and who do not make false and misleading statements in connection with the sale and distribution of their products.

PAR. 4. In the course and conduct of respondents' business, they have disseminated false advertisements for the purpose of inducing, directly or indirectly, the purchase of their said medical preparations. Said false advertisements were and are disseminated by use of the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations, which have sufficient power to, and do, convey the programs emanating therefrom to listeners thereto located in the various States of the United States other than the State from which said broadcasts originate. The greater part of certain advertisements are disseminated by the respondent in the Spanish language. The list of advertisements quoted below are English translations of the advertisements actually disseminated as aforesaid. Among and typical of said statements and representations are the following:

ZENDEJAS MEDICINE

It is a medical compound that contains the active principals of many plants, barks and roots whose curative qualities have been well known since remote times.

It contributes to the purification of the blood and works as an alterative for general digestive system, increases metabolism and transforms the organic

functions; therefore, it promotes the formation of new and healthy elements.

It has a dilatory action on the arteries, which activate and regulate the circulation of blood to the outer surface and the tissues and aids in preserving the natural fluids of the blood, prevents formation of small blood clots (thrombosis and embolisms) that obstruct the arteries. Because of its diaphoretic and diuretic action and its resolvent and smooth laxative qualities, it throws off on the surface the useless and noxious elements. In general it is indicated for all ailments for which an iodized vegetable medicine could be prescribed.

It can be practically demonstrated that an iodized medicine is of great value for this universal ailment (rheumatism). Zendejas Medicine combines the qualities of an iodized preparation with the benefits of vegetable elements, which go so well with the iodized.

RHEUMATIC PAINS

Gout Arthritis

If you are a victim of the tortures of this disease, especially during the winter, remember that millions of rheumatics recommend the incomparable Mexican remedy.

Zendejas is a valuable remedy against rheumatism because you attack the trouble at its true origin, clear the blood of the noxious matter which causes it.

Aids digestion and renews vigor.

POMADA ZENDEJAS

(Zendejas Ointment)

And for many reasons it can be remembered for its use because of its marvelous results in eczema, rash, ringworm, and itching, and other affections, are some of the things which cause you always to remember it.

SKIN DISEASES

You don't have to suffer from diseases like eczema, ringworm, and other skin irritations, many of them repulsive, that prohibit from all social contact. Remember that Pomada Zendejas is an efficacious remedy easy to apply.

SKIN ERUPTIONS

Many eruptions are very useful. Others produce desperate itching. There are others that if they aren't painful, like eczema and psoriasis, are at least nuisances and have a disagreeable appearance. Lapomada Zendejas gives immediate relief, soothes the itching quickly, and when the eruptions can't be traced to any specific diseases, it makes them disappear.

PAR. 5. The Commission finds that through the use of the statements and representations hereinabove set forth in paragraph 4 hereof, and others similar thereto, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' products, respondents have represented and do now represent, directly and indirectly, that respondents' preparation, "Zendejas Medicine," contains well-known curative qualities of many plants, barks, and roots; that it contributes to the purification of the blood;

that it is an alterative for the general digestive system; that it promotes the formation of new and healthy elements, regulates the circulation of the blood, and prevents blood clots; that it eliminates useless and noxious elements from the system; that it is a cure and remedy for all ailments for which an iodized medicine could be prescribed; that it is a cure or remedy for rheumatism because it clears the blood of noxious matter; that it is of great value in the treatment of gout and arthritis; that millions of rheumatics recommend its use; that "Zendejas Ointment" is a competent and efficient treatment for, or will cure, eczema, rash, ringworm, itching, and other skin diseases; that it is a cure or remedy for skin diseases; that its use gives immediate relief to sufferers of skin eruptions and causes such eruptions to disappear.

PAR. 6. The Commission finds that the aforesaid false and misleading statements, representations, and advertisements set forth in paragraphs 4 and 5 hereof, which respondents make with respect to the therapeutic value of their said products are grossly exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, respondents' preparation, "Zendejas Medicine" does not contain the well-known curative qualities of plants, barks, and roots. It does not contribute to purifying the blood. It is not an alterative for the general digestive system. It does not aid the general digestive system and does not promote the formation of new and healthy elements. Said preparation does not regulate the circulation of the blood, nor does it prevent blood clots and does not eliminate useless and noxious elements from the system. This preparation is not a cure or remedy for all ailments for which an iodized medicine could be prescribed. It is not a cure or remedy for rheumatism and does not clear the blood of the noxious matter which causes same. It is not a great remedy in the treatment of gout or arthritis, and millions of rheumatics do not recommend the use of said preparation.

Respondents' preparation "Zendejas Ointment" is not a competent or efficient treatment for, nor will it cure, or be of substantial therapeutic value in the treatment of eczema, rash, ringworm, itching, and other skin diseases. It is not a remedy for skin diseases and its use does not give immediate relief to sufferers of skin eruptions and its use will not cause such eruptions to disappear.

PAR. 7. The Commission finds that the formula of the preparation "Zendejas Medicine" is composed essentially of cassa augustifolia (senna) and potassium iodide, and that the indiscriminate use of iodides by the public is dangerous and may cause great harm to persons afflicted with latent tuberculosis and toxic goiter.

The Commission further finds that the preparation "Zendejas Ointment" contains the ingredient "Betanaphthol," which is a dangerous drug, and which should be used only under a physician's supervision since it has a special irritant action on the kidneys and since severe neuritis has been caused by its absorption from the skin. It is especially contraindicated in the presence of renal disease.

The Commission further finds that in the course and conduct of their business the respondents have not disclosed to purchasers and prospective purchasers of their preparations that the indiscriminate use of said preparations by the uninformed may cause them to suffer irreparable and perhaps fatal injury.

PAR. 8. The use by the respondents of each and all of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medical preparations 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 and mistaken belief that such false statements, representations, and advertisements are true, and that respondents' said preparations possess the properties claimed and represented and that said preparations when taken will accomplish the results represented and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparation. As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness and use of their respective products. As a result thereof, substantial injury has been done and is now being done by respondents 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 respondents as herein found are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices 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, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they

waive all intervening procedure and further hearings as to the facts, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Zendejas Products Corporation, a corporation, its officers, representatives, agents, and employees, and Jose Silva, individually and trading as Zendejas Products Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medical preparations containing drugs now designated by the names "Zendejas Medicine" and "Zendejas Ointment," or any other medical preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or any other name or names or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medical preparations, which advertisements represent directly or through implication that said medicinal preparation "Zendejas Medicine" contains well-known curative properties of many plants, barks, and roots; that it contributes to the purification of the blood; that it is an alterative for the general digestive system; that it promotes a formation of new and healthy elements and regulates the circulation of the blood and prevents blood clots; that it eliminates useless and obnoxious elements from the system; that it is a cure and remedy for all ailments for which an iodized medicine could be prescribed; that it is a cure or remedy for rheumatism; that it is of great value in the treatment of gout and arthritis; that millions of rheumatics recommend its use; or which advertisements fail to reveal that said preparation "Zendejas Medicine," whether sold under the aforesaid name or any other name, contains potassium iodide and that said preparation may be injurious to persons afflicted with latent tuberculosis or toxic goiter, and that its indiscriminate use by the lay public is dangerous; or which advertisements represent directly or through implication that the medicinal preparation "Zendejas Ointment" is a competent and effective treatment, or cure,

for eczema, rash, ringworm, itching, and other skin diseases; that it is a cure or remedy for skin diseases or that its use gives immediate relief to sufferers from skin eruptions and cause such eruptions to disappear; or which advertisements fail to reveal that said preparation "Zendejas Ointment," whether sold under the aforesaid name or under any other name, contains betanaphthol and that said ingredient is a dangerous drug which should be used only under a physician's supervision.

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

UNITED DISTRIBUTORS, INC.

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

Docket 3708. Complaint, Feb. 13, 1939—Decision, Sept. 7, 1939

Where a corporation engaged in manufacture of its "Wittone" preparation for treatment of various diseases, and in sale and distribution thereof to members of purchasing public in the various States, in substantial competition in commerce with others engaged in sale and distribution of other preparations designed and intended for and used in treatment of the conditions for which it recommended its said "Wittone"; in advertisements which it disseminated through circulars, folders, calendars, match books, and other printed and written matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of its said product—

(*a*) Represented that constipation caused a swelling of the digestive organs, and that generation of poisons was usual consequence of constipation, and that distention of such organs was caused by poison and that such distention brought about pressure on the nerves, resulting in bilious spells, dizziness, headaches, dull tired feelings, and various other asserted symptoms there set forth, and that use of its said "Wittone" would, by relieving pressure on the nerves, eliminate such various conditions, and that professional medical opinion was to the effect that 87 percent of all ailments were traceable to constipation as fundamental cause, and that said "Wittone" would cleanse the bowels as they had never been "cleansed before and tone them into better daily action," and that use thereof would strengthen the nerves and assure and impart physical beauty to the user;

(*b*) Represented that such use would lift mental depression, regardless of its cause, rendering the mind active and alert and affording relief from all stomach disorders, and that its action was gentle and would assure, in all cases, good health, well-being and healthy condition of the blood stream, and that it contained seven carminatives and was beneficial in stimulating the appetite and digestive processes, etc.; and

(*c*) Represented that it relieved the liver and kidneys of a part of their work and was a remedy and adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys, and other disorders, and was of value in connection with the functioning of the kidneys, driving out poison, and beneficial to women passing through change of life, and would relieve nervous indigestion, pains in legs or sides, sick headaches, high blood pressure, heart trouble, and various other ailments and conditions, and would avert the cold and restore to normal all abnormal functioning of the nervous system, blood stream, liver or stomach;

Facts being representations, as aforesaid, as to cause and effect of constipation were untrue or misleading, as were those as to cause and effect of distention of the digestive organs, various symptoms enumerated were not due to nerve pressure in region of digestive organs caused by their distention, but to other causes, it possessed laxative and cathartic properties

and was primarily a laxative, but would not tone up nor improve the normal action of the bowels, and action thereof was not gentle, it would not result in lifting of mental depression regardless of cause, did not contain ingredients such as to afford any immediate significant relief for all stomach disorders, and representations made, as above, with respect to percentage of ailments traceable to constipation as fundamental cause, and with respect to effects and functioning of said preparation, were exaggerated, misleading, and untrue, and constituted false advertising;

With capacity and tendency to engender in minds of purchasing public erroneous and mistaken belief that said statements, representations and claims were true, and that said "Wittone" possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, because of such belief, to purchase substantial quantities of its said product, and of thereby, as direct result, diverting unfairly trade in commerce to it from its competitors aforesaid who do not misrepresent their respective preparations or therapeutic properties thereof:

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

Mr. R. W. Branch for the Commission.

Mr. J. P. Ruddick and *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that United Distributors, Inc., hereinafter referred to as respondent, has violated the provisions of the 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, United Distributors, Inc., is a corporation organized under the laws of the State of Kentucky, and having its offices and principal place of business at 113 South Third Street, Louisville, Ky.

Par. 2. Respondent is now, and for more than one year last past has been, engaged in the business of manufacturing, selling and distributing a certain preparation known as "Wittone," which is intended for use in the mitigation or treatment of diseases in man. Respondent sells such preparation to the members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of

Kentucky and from its manufacturing plant located in the city of Utica in the State of Indiana, to the purchasers thereof at their respective points of location in various States of the United States other than the States of Kentucky and Indiana and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with individuals, firms and partnerships selling and distributing preparations and products designed and intended for and used in the treatment, relief, and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by circulars, folders, calendars, match books, and other printed or written matter distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Modern doctors say that poisons from constipation swell up digestive organs causing pressure on nerves in this region. This nerve pressure causes frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite.

Don't fool with laxatives that give slow action * * *. What you want is Quick results. Get That Pressure Off The Nerves. Flush the intestinal

system. When offending wastes are gone, the bowels return to normal size and nerve pressure stops.

Almost at once you feel marvelously refreshed, blues vanish and life looks bright again.

That is why so many doctors are now insisting on gentle but Quick Action. That is why you should insist on Wittone.

This efficient intestinal evacuant contains Seven carminative ingredients.

It acts in relieving stomach distress at once, * * *.

Clean stomach, liver and bowels mean an active mind.

The only road to complete health and vitality and the best assurance of continued well being is a clean alimentary tract.

How to have rich, strong blood: There are two vital things to do: First, eat plenty of good food and digest it thoroughly. Second, keep the blood free from impurities and poisons. Thousands of people have been able to do both these things with the help of Wittone. It stimulates your appetite and helps digest your food properly, thus enabling the blood to get the proper nourishment from it. Wittone also cleanses the intestinal tract from impurities, thus preventing their absorption into the blood stream. This takes a heavy load off the liver and kidneys enabling them to work better.

Wonderful Diuretic for Weak Kidneys and Stimulant to Sluggish Liver.

A notable discovery has been made that is bringing happiness and relief to men and women who are suffering the common afflictions caused by deranged stomach, inactive liver, weak kidneys and similar disorders.

It contains nature's finest health building ingredients.

Its ingredients mix with the food in your stomach, improving your digestion which overcomes constipation in a natural way.

Wittone will cleanse your bowels as they were never cleansed before and tone them into better daily action.

You get amazing relief as soon as these poisons leave the kidneys; relief from backache, bladder irritation, weakness. At any age, children are relieved from bed-wetting within a few days. (Nerves are strengthened naturally.)

* * * a beautiful woman is self made * * * she has guarded herself with * * * proper habits against the ravages of time. Constipation is a "great American curse" * * *.

According to Professional Opinion 87% of All sickness is traceable to putrefaction of decayed waste products and toxins formed in the colon.

This medicine is not a "patent medicine" or "cure all" * * *.

I find myself almost entirely free of rheumatic aches * * *.

I was weak, run down and nervous. No doubt this is called "change of life * * *." After taking Wittone I feel like a different woman.

I suffered from profuse menstruation and awful cramping spells and had to go to bed every month. Since taking Wittone I have been able to do my housework.

Wittone is constantly leading people back to normalcy in the functions of the: Nervous system, Blood stream, Kidneys, Stomach, Liver.

Nervous indigestion * * * Wittone * * * was relieved.

I suffered from sick headache spells * * * have not had a sick spell since.

I have suffered from * * * high blood pressure * * * and heart trouble. One bottle of your tonic has made me feel fifty per cent better and I feel that another bottle will restore my health completely.

If taken at the beginning of a cold it will entirely avert a cold.

I took one bottle of Wittone and feel like a new woman. I suffered from bladder trouble, extreme nervousness and insomnia.

Prostate and kidney trouble * * * I have been feeling fine.

My legs had hurt me since 1905, my side and stomach had hurt me since 1918 * * * after the fifth dose I had complete relief.

* * * an incurable case of ulcerated stomach. * * * I feel better than I have in years and can eat anything I want without the least discomfort.

Several local doctors had treated me for gall bladder trouble * * *. It has helped me wonderfully.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that frequent bilious spells, dizziness, headache, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite are the results of pressure on the nerves in the region of the digestive organs due to poisons from constipation swelling those organs; that the use of "Wittone" will result in a quick flushing of the intestinal system and removal of pressure on the nerves in that locality with relief from the symptoms set forth above, and an almost immediate feeling by the user of refreshment, relief from mental depression, optimism, and cheer; that the laxative action of "Wittone" is gentle but quick; that it contains seven carminatives; that it will immediately relieve all distresses located in the stomach; that the user will have a clean stomach, liver, and bowels and an active mind; that the sole requisite for complete health, vitality, and well-being is a clean alimentary tract; that "Wittone" will enable the user to eat and digest sufficient food and keep the blood free from impurities, assuring him of rich strong blood; that "Wittone" will stimulate the appetite, assure proper digestion, cleanse the intestinal tract from impurities, and relieve the liver and kidneys of a part of their work; that it is a diuretic of great merit, and stimulates the action of the liver; that it is a notable discovery and is a competent remedy and adequate treatment for all deranged conditions of the stomach and for inactive liver, weak kidneys, and similar disorders, regardless of their cause; that it is a tonic; that it will relieve constipation by improving the digestion; that it is a superlative bowel cleanser and that it will improve the natural action of the bowels; that it will drive poisons out of the kidneys, relieve backache, bladder irritations, weakness, bed-wetting in children, and will strengthen the nerves naturally;

that beauty may be obtained by keeping the bowels open; that according to reliable professional opinion 87 percent of all ailments is due to the putrefaction of decayed waste products and poisons in the colon, due to constipation; that "Wittone" is not in the class of the generally so-called "patent medicine" or "cure all"; that it will cure rheumatic pains; that it is beneficial to women experiencing the change of life; that it will relieve the pains and other distresses incident to menstruation; that it will relieve nervous indigestion, pains in legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney, and gall bladder trouble and ulcers of the stomach; that it will, if seasonably taken, avert the common cold and will restore to normal any abnormal functioning of the nervous system, blood stream, liver, and stomach.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, constipation does not cause the digestive organs to swell. Distentions of the digestive organs are ordinarily due to gases caused by fermentation or other conditions which may or may not be an accompaniment of poisons and are not caused by poisons. Constipation, although it may result in fermentation in the digestive tract, does not in all or in many cases result in the generation of poisons therein by fermentation or otherwise. The presence of a distention of the digestive organs will not cause any significant pressure on the nerves in their locality and the symptoms of bilious spells, dizziness, headaches, sour stomach, dull tired feeling, sleepless nights, coated tongue, bad taste and loss of appetite, are not due to nerve pressure in the region of the digestive organs caused by their distention, but to other causes. "Wittone" possesses laxative and cathartic properties and the recommended dosage would ordinarily be sufficient to cause defecation, but will not, by relieving pressure on the nerves, eliminate the symptoms set forth above.

The use of "Wittone" will not result in the lifting of mental depression, regardless of its cause. The action of "Wittone" is neither quick nor gentle. "Wittone" does not contain seven carminatives, but only two, and the amount of these in the recommended dosage is relatively insignificant. The ingredients of "Wittone" are not such as to afford any immediate significant relief for all stomach disorders.

To any cleanliness which "Wittone" may impart to the stomach, liver, or bowels, an active and alert mind is not a necessary concomitant. These organs are never "clean" in any generally accepted sense of the word. Health, vitality and well-being are not solely dependent upon a clean alimentary tract, but upon other factors as well.

Adequate amounts of good food, a good digestion and an absence of impurities and poisons are important, but not the only factors in a healthy condition of the blood stream. The only stimulations to the appetite and to the digestive processes which "Wittone" will give are such as may arise from its laxative or cathartic action. It does not relieve the liver of any portion of its normal functions. In the recommended dosage it is only slightly diuretic and does not stimulate the action of the liver. "Wittone" is not a notable discovery. It is primarily a laxative and is not a competent remedy nor an adequate treatment for all deranged stomachic conditions or for inactive liver, weak kidneys, or similar disorders, regardless of their cause. "Wittone" has no tonic qualities. "Wittone" is not an aid to digestion except as stated herein, and so far as it may affect constipation, it does so only by inducing an artificial movement of the bowels and not a natural movement. Its action is not that of a cleanser; its use will not tone up nor improve, but will rather tend to impair the natural action of the bowels. "Wittone" in the recommended dosage does not contain diuretics in a therapeutically significant quantity and will not strengthen the nerves. An open bowel is not an assurance of physical beauty; reliable professional opinion does not regard 87 percent of all ailments as traceable to constipation as the fundamental cause. "Wittone" is a preparation of the type generally described as "patent medicine" and the claims made for its therapeutic properties are such as to characterize it as what is generally known as a "cure all." It is not a competent treatment or remedy for rheumatic aches and pains and is of no value to women passing through the period of change of life. It has no significant analgesic properties. It will not relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney and gall bladder trouble or ulcers of the stomach; it will not, though seasonably taken, avert the common cold and it will not restore to normal all abnormal functioning of the nervous system, blood stream, liver, and stomach.

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements, representations and claims, disseminated as aforesaid, with respect to said preparation, 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 and mistaken belief that such false statements, representations and claims are true; that respondent's preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous

and mistaken belief, to purchase substantial quantities of respondent's preparation.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products, as described in paragraph 3 hereof. 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 and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1939, issued and thereafter served its complaint in this proceeding upon said respondent, United Distributors, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 10, 1939, 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 and Richard P. Whiteley, assistant 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, subject to the right of the respondent or of counsel for the Commission to file briefs and make application for oral argument as provided by the rules of the Commission, and also subject to the right of the respondent to file a petition for review of the Commission's order as provided by the Federal Trade Commission Act. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the respondent and counsel for the Commission having elected not to file briefs or make application for 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, United Distributors, Inc., is a corporation organized under the laws of the State of Kentucky and having its office and principal place of business in the city of Louisville, Ky. Respondent is now, and has been for more than one year last past, engaged in the business of manufacturing, selling and distributing a certain preparation known as "Wittone" which is intended for use in the treatment of various diseases in man. In the course and conduct of its business, respondent sells this preparation to members of the purchasing public situated in the various States of the United States and causes said preparation when sold by it to be transported from its aforesaid place of business in Kentucky and from its manufacturing plant in the city of Utica, Ind., to purchasers thereof located in various States of the United States other than the States of Kentucky and Indiana and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Each 12-ounce bottle of "Wittone" contains the following:

1.	Iron-Ammonium Citrate	40 grs.
2.	Sodium Salicylate	27 grs.
3.	Oil of Cloves	9/10 minim.
4.	Magnesium Sulphate	3.3 ozs.
5.	Oil of Cassia	2 7/10 minim.
6.	Sodium Phosphate	40 grs.
7.	Saccharine	3 6/10 grs.
8.	Sodium Bicarbonate	27 grs.
9.	Water	8.5 ozs.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and has been for more than 1 year last past, engaged in substantial competition in commerce among and between the various States of the United States with other corporations and with individuals, firms and partnerships engaged in the sale and distribution of other preparations designed and intended for, and used in the treatment of, the conditions of the human body for which respondent recommends the use of its aforesaid preparation. Among such competitors in said commerce are many who do not misrepresent their said preparations or the therapeutic properties thereof.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused,

and is now causing, the dissemination of advertisements concerning its said product by circulars, folders, calendars, match books, and other printed or written matter distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of advertisements concerning its product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Modern doctors say that poisons from constipation swell up digestive organs causing pressure on nerves in this region. This nerve pressure causes frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite.

Don't fool with laxatives that give slow action * * *. What you want is Quick results. Get That Pressure Off The Nerves. Flush the intestinal system. When offending wastes are gone, the bowels return to normal size and nerve pressure stops.

Almost at once you feel marvelously refreshed, blues vanish and life looks bright again.

That is why so many doctors are now insisting on gentle but Quick Action. That is why you should insist on Wittone.

This efficient intestinal evacuant contains Seven carminative ingredients.

It acts in relieving stomach distress at once, * * *.

Clean stomach, liver and bowels mean an active mind.

The only road to complete health and vitality and the best assurance of continued well being is a clean alimentary tract.

How to have rich, strong blood: There are two vital things to do: First, eat plenty of good food and digest it thoroughly. Second, keep the blood free from impurities and poisons. Thousands of people have been able to do both these things with the help of Wittone. It stimulates your appetite and helps digest your food properly, thus enabling the blood to get the proper nourishment from it. Wittone also cleanses the intestinal tract from impurities, thus preventing their absorption into the blood stream. This takes a heavy load off the liver and kidneys enabling them to work better.

A notable discovery has been made that is bringing happiness and relief to men and women who are suffering the common afflictions caused by deranged stomach, inactive liver, weak kidneys and similar disorders.

Its ingredients mix with the food in your stomach, improving your digestion which overcomes constipation in a natural way.

Wittone will cleanse your bowels as they were never cleansed before and tone them into better daily action.

You get amazing relief as soon as these poisons leave the kidneys; relief from backache, bladder irritation, weakness. At any age, children are relieved from bed-wetting within a few days. (nerves are strengthened naturally.)

* * * a beautiful woman is self made * * * she has guarded herself with * * * proper habits against the ravages of time. Constipation is a "great American curse" * * *.

According to Professional Opinion 87% of All sickness is traceable to putrefaction of decayed waste products and toxins formed in the colon.

I find myself almost entirely free of rheumatic aches * * *.

I was weak, run down and nervous. No doubt that is called "change of life * * *." After taking Wittone I feel like a different woman.

I suffered from profuse menstruation and awful cramping spells and had to go to bed every month. Since taking Wittone I have been able to do my housework.

Wittone is constantly leading people back to normalcy in the functions of the: Nervous system, blood stream, kidneys, Stomach, Liver.

Nervous indigestion * * * Wittone * * * was relieved.

I suffered from sick headache spells * * * have not had a sick spell since.

I have suffered from * * * high blood pressure * * * and heart trouble. One bottle of your tonic has made me feel fifty per cent better and I feel that another bottle will restore my health completely.

If taken at the beginning of a cold it will entirely avert a cold.

I took one bottle of Wittone and feel like a new woman. I suffered from bladder trouble, extreme nervousness and insomnia.

Prostate and kidney trouble * * * I have been feeling fine.

My legs had hurt me since 1905, my side and stomach had hurt me since 1918 * * * after the fifth dose I had complete relief.

* * * an incurable case of ulcerated stomach. * * * I feel better than I have in years and can eat anything I want without the least discomfort.

Several local doctors had treated me for gall bladder trouble * * *. It has helped me wonderfully.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends its preparation, or of the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent, directly and by implication, has represented that frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite are the results of pressure on the nerves in the region of the digestive organs due to poisons from constipation swelling those organs, that the use of "Wittone" will cause a quick flushing of the intestinal system and removal of pressure on the nerves in that locality with relief from the aforesaid symptoms and an almost immediate feeling by the user of refreshment, relief from mental depression, optimism and cheer; that the laxative action of "Wittone" is gentle but quick;

that said preparation contains seven carminatives; that it will immediately relieve all distresses located in the stomach; that the user of "Wittone" will have a clean stomach, liver, and bowels and an active mind; that the sole requisite for complete health, vitality, and well-being is a clean alimentary tract; that "Wittone" will enable the user to eat and digest sufficient food and keep the blood free from impurities, assuring him of rich strong blood; that "Wittone" will stimulate the appetite, assure proper digestion, cleanse the intestinal tract from impurities, and relieve the liver and kidneys of a part of their work; that it is a notable discovery and is a competent remedy and adequate treatment for all deranged conditions of the stomach and for inactive liver, weak kidneys, and similar disorders, regardless of their cause; that it will relieve constipation by improving the digestion; that it is a superlative bowel cleanser and that it will improve the natural action of the bowels; that it will drive poisons out of the kidneys, relieve backache, bladder irritations, weakness, bed-wetting in children, and will strengthen the nerves naturally; that beauty may be obtained by keeping the bowels open; that according to reliable professional opinion 87 percent of all ailments is due to the putrefaction of decayed waste products and poisons in the colon, due to constipation; that it will cure rheumatic pains; that it is beneficial to women experiencing the change of life; that it will relieve the pains and other distresses incident to menstruation; that it will relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney, and gall bladder trouble and ulcers of the stomach; that it will, if seasonably taken, avert the common cold and will restore to normal any abnormal functioning of the nervous system, blood stream, liver and stomach.

PAR. 6. The representations made by respondent, directly and by implication, and used and disseminated by respondent in the manner described, with respect to its said preparation are exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, constipation does not cause the digestive organs to swell. Distentions of the digestive organs are ordinarily due to gases caused by fermentation or other conditions which may or may not be an accompaniment of poisons and are not caused by poisons. Constipation, although it may result in fermentation in the digestive tract, does not in all or in many cases result in the generation of poisons therein by fermentation or otherwise. The presence of a distension of the digestive organs will not cause any significant pressure on the nerves in their locality and the symptoms of bilious spells, dizziness, headaches, sour stomach, dull tired feeling, sleepless nights, coated

tongue, bad taste, and loss of appetite, are not due to nerve pressure in the region of the digestive organs caused by their distension, but to other causes. "Wittone" possesses laxative and cathartic properties and the recommended dosage would ordinarily be sufficient to cause defecation, but will not, by relieving pressure on the nerves, eliminate the symptoms set forth above.

The use of "Wittone" will not result in the lifting of mental depression, regardless of its cause. The action of "Wittone" is not gentle. "Wittone" does not contain seven carminatives, but only two. The ingredients of "Wittone" are not such as to afford any immediate significant relief for all stomach disorders.

To any cleanliness which "Wittone" may impart to the stomach, liver, or bowels, an active and alert mind is not a necessary concomitant. Health, vitality, and well-being are not solely dependent upon a clean alimentary tract, but upon other factors as well. Adequate amounts of good food, a good digestion and an absence of impurities and poisons are important, but not the only factors in a healthy condition of the blood stream. The only stimulations to the appetite and to the digestive processes and to the nourishment of the blood which "Wittone" will give are such as may arise from its tonic, laxative, or cathartic action. It does not relieve the liver of any portion of its normal functions. "Wittone" is not a notable discovery. It is primarily a laxative and is not a competent remedy nor an adequate treatment for all deranged stomachic conditions or for inactive liver, weak kidneys, or similar disorders, regardless of their cause. "Wittone" is not an aid to digestion except as stated herein, and so far as it may affect constipation, it does so only by inducing an artificial movement of the bowels and not a natural movement. Its use will not tone up nor improve the natural action of the bowels. "Wittone" will not strengthen the nerves. An open bowel is not an assurance of physical beauty; reliable professional opinion does not regard 87 percent of all ailments as traceable to constipation as the fundamental cause. It is not a competent treatment or remedy for rheumatic aches and pains and is of no value to women passing through the period of change of life. It has no significant analgesic properties. Its value in the treatment of kidney troubles is limited to those for which a mild diuretic is indicated. It will not relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, and gall bladder trouble or ulcers of the stomach; it will not, though seasonably taken, avert the common cold and it will not restore to normal all abnormal functioning of the nervous system, blood stream. liver and stomach.

PAR. 7. The use of the aforesaid statements and claims disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of a drug, and has had, and now has, the capacity and tendency to engender in the minds of the purchasing public the erroneous and mistaken belief that the said statements, representations and claims are true; that respondent's preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors, who do not misrepresent their respective preparations or the therapeutic properties thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, United Distributors, Inc., a corporation, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions 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 a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence 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 (respondent and counsel for the Commission having elected not to exercise their privilege, which was reserved in said stipulation, of filing briefs and making application for oral argument), 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, United Distributors, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any ad-

vertisement by means of United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of its medicinal preparation now designated "Wittone" or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or indirectly:

1. That constipation causes a swelling of the digestive organs or that the generation of poisons is a usual consequence of constipation.

2. That a distention of the digestive organs is caused by poisons or that a distention of such organs causes any significant pressure on the nerves in the locality of such organs.

3. That bilious spells, dizziness, headaches, sour stomach, dull tired feelings, sleepless nights, coated tongue, bad taste, or loss of appetite are due to pressure on the nerves caused by a distention of the digestive organs, or that the use of said preparation will, by relieving pressure on the nerves, eliminate any of such conditions.

4. That the use of said preparation will lift mental depression regardless of its cause, render the mind active or alert, or afford any significant immediate relief for all stomach disorders.

5. That the action of such preparation is gentle or that its use will assure, in all cases, good health, vitality, well-being, or a healthy condition of the blood stream.

6. That such preparation contains seven carminatives or that said preparation contains any specified number of carminatives other than the number which is in fact contained in said preparation.

7. That said preparation has any beneficial effect in stimulating the appetite or digestive processes or nourishing the blood stream unless such representation is limited to the effectiveness of the tonic, laxative and cathartic properties of said preparation.

8. That said preparation relieves the liver of any portion of its normal functions or that said preparation is a notable discovery.

9. That said preparation is a remedy or an adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys or similar disorders.

10. That said preparation has any therapeutic value in the treatment of constipation other than inducing an artificial bowel move-

ment or that the use of said preparation will tone up or improve the natural action of the bowels.

11. That the use of said preparation will strengthen the nerves or assure or impart physical beauty to the user.

12. That professional medical opinion is to the effect that 87 percent of all ailments are traceable to constipation as the fundamental cause, or that such opinion is to the effect that any other percentage of ailments are so traceable unless such percentage is the percentage generally recognized by the consensus of the medical profession.

13. That said preparation is a remedy or a competent treatment for rheumatic aches or pains or is beneficial to women passing through the period of change of life, or that said preparation possesses significant analgesic properties.

14. That said preparation has any therapeutic value in the treatment of kidney troubles unless such representation is limited to those conditions in the treatment of which a mild diuretic is indicated.

15. That said preparation will relieve nervous indigestion, pains in the legs or sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate or gall bladder trouble or ulcers of the stomach, or that said preparation will avert the common cold, or that said preparation will restore to normal all abnormal functioning of the nervous system, blood stream, liver, or stomach.

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

ISAAC S. FRIEDMAN, AN INDIVIDUAL TRADING AS WRIGHT 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 3806. Complaint, June 3, 1939—Decision, Sept. 7, 1939

Where an individual engaged in sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution thereof to purchasing public, and distribution to said public of certain literature and instructions, including push cards, order blanks and depictions of merchandise in question in circulars explaining his plan of selling same, under which person selecting by chance from 35 feminine names displayed on card, name corresponding with name concealed under card's large seal received spinning-wheel clock of asserted $5 value, and person receiving certain number received De Luxe Combination Pen and Pencil of asserted $2 value, and amount paid by customer, if any, was contingent upon number selected by chance as determined by disk of card pushed, and operator of card was compensated by premium or prize; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar sales plans, varying in detail only therefrom, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, or article of merchandise free, and which article of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States government and in violation of the criminal laws, and in competition with 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;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect through use of such method and because of said game of chance of diverting trade unfairly to him from his competitors aforesaid who do not use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Isaac S. Friedman, an individual trading as Wright Products Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Isaac S. Friedman, is an individual trading as Wright Products Co. His principal office and place of business is located at 4303 North Keeler Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and

circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears thirty-five (35) 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 thirty-five (35) small, partially perforated disks on the face of which is printed the word "push." 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Name under LARGE SEAL receives an
ANIMATED
SPINNING WHEEL CLOCK
The New Sensational Time Piece $5.00 VALUE

Number 20 Receives De Luxe Combination
Pen and Pencil—Value $2.00

Numbers 1 to 19 Pay Only
AMOUNT YOU DRAW
Any Number Over 19 Pays Only 19¢

FREE—4 Numbers are FREE
10—11—12—16
You Pay nothing if you draw these numbers, yet have an equal chance

Do not remove seal until entire card is sold

WRITE YOUR NAME OPPOSITE
NAME YOU SELECT ON REVERSE SIDE

Sales of respondent's merchandise 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 and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales

plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 3, 1939, issued and served its complaint in this proceeding upon respondent, Isaac S. Friedman, an individual trading as Wright Products Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 31, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. 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, Isaac S. Friedman, is an individual trading as Wright Products Co. His principal office and place of business is located at 4303 North Keeler Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 mechandise furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears thirty-five (35) 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 thirty-five (35) small, partially perforated disks on the face of which is printed the word "push." 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Name under LARGE SEAL receives an
ANIMATED

SPINNING WHEEL CLOCK

The New Sensational Time Piece $5.00 VALUE

Number 20 Receives De Luxe Combination
Pen and Pencil—Value $2.00

Numbers 1 to 19 Pay Only

AMOUNT YOU DRAW
Any Number Over 19 Pays Only 19¢

FREE—4 Numbers are FREE
10—11—12—16

Do not
remove seal
until entire
card is sold

You Pay nothing if you draw
these numbers, yet have an
equal chance

WRITE YOUR NAME OPPOSITE
NAME YOU SELECT ON REVERSE SIDE

Sales of respondent's merchandise 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 and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade in commerce between

and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts 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, Isaac S. Friedman, an individual trading as Wright Products Company, or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, 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, so as to enable such persons to dispose of or sell any merchandise 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise 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 the 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 this order.

IN THE MATTER OF

G. BERNARDI

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

Docket 3857. Complaint, July 21, 1939—Decision, Sept. 7, 1939

Where an individual engaged in sale and distribution of his "Benaris" drug-containing medicinal preparation to purchasers in various other States and in the District of Columbia; in advertisements which he disseminated through the mails and through newspapers and periodicals of general circulation, and through continuities broadcast from radio stations of extrastate audience, and which were intended and likely to induce purchase of his said product—

(*a*) Represented, directly and by implication, that said "Benaris" constituted a competent and effective cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation and inflammation of the throat, inflamed and enlarged tonsils, hoarseness, rose or hay fever, and congestion of the nasal passages, and was an effective treatment and preventive of rose or hay fever, facts being it was not such a cure or remedy for said various ailments and conditions, nor effective treatment for and preventive of rose or hay fever;

(*b*) Represented that said "Benaris" would neutralize the tissues and eliminate colds, and in all cases relieve headaches, and would penetrate the openings to the sinuses and relieve sinus congestion and assure a healthful efficient day, and bring new life and sensation to user thereof, facts being it was not beneficial in relief of headaches which were not due to congestion of mucous membranes of the air passages, sinus openings in many cases are clogged so as to prevent access of such preparation, in which cases it would not penetrate the openings to the sinuses or relieve congestion, and it would not neutralize tissues or eliminate colds, or insure a healthful or efficient day, or bring new life or sensation to user; and

(*c*) Represented that by use of said "Benaris" greater diaphragmatic breathing could be obtained, resulting in finer head tones, and that it would increase resonance, volume, and quality of voice, facts being it would not cause such various results, as above claimed;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of his said drug-containing medicinal preparation, and with result, as direct consequence, that trade was diverted unfairly to him from his competitors who truthfully advertise the therapeutic value of their respective products; to the substantial injury of competition in commerce:

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

Mr. Robert Mathis, Jr. for the Commission.

Baker, Hostetler & Patterson, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. Bernardi, hereinafter referred to as respondent, has violated the provisions of the 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 G. Bernardi is an individual and has his office and principal place of business at 1017 Euclid Avenue in the city of Cleveland, State of Ohio.

PAR. 2. The respondent is now and has been for several years last past, engaged in the business of selling and distributing a medicinal preparation containing drugs designated "Benaris." Respondent causes said preparation when sold, to be transported from his aforesaid place of business in the State of Ohio to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Ohio, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation 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 said business respondent is, and has been at all times referred to herein, in competition with other individuals and with corporations, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of products designed and used for the same purposes for which respondent recommends the use of the preparation Benaris.

PAR. 4. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are

likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

For colds, chronic colds, catarrh, bronchitis and laryngitis, use that soothing, refreshing formula, Benaris. Benaris, not only helps to cure, but prevents colds. Smokers find that it relieves the tendency to dryness and headaches.

If you're troubled with chronic colds, and nose and throat infections, here's something you should know about. Benaris, spelled B-e-n-a-r-i-s, the development of a well-known concert singer, who for 23 years was unable to carry on his work. For this reason Benaris is especially recommended to those who are dependent on their voices a great deal. People who smoke find that Benaris relieves the tendency to dryness, and headaches. Those having enlarged tonsils, who wish to keep their throats, and voices in good condition should apply a few drops of Benaris on the back part of the tongue, especially in the morning. This refreshens and neutralizes the tissues. Bronchitis and laryngitis may likewise be treated in the same manner.

When a head cold comes on, use Benaris immediately. It acts instantly, relieving headaches, catarrh, bronchitis and laryngitis. Benaris is acclaimed for its remarkable cleansing and healing power. It keeps your nasal passages open, eliminates colds, and results in better health.

Many people suffer unnecessarily from sinus ailments during the cold season—unaware that a new, practical, and lasting preparation, called Benaris, has been developed to give quick relief. Thousands have used this unusual formula, and found that Benaris checks, and relieves colds, headaches, catarrh, bronchitis, and laryngitis. Benaris is compounded from the very finest ingredients—and is acclaimed for its remarkable cleansing power, yet it never irritates. It relieves unpleasant irritation and inflammation of the throat, resulting in an instant improvement in the voice. Benaris will also relieve the difficulties caused by mouth breathing, when due to nasal congestion. In order that your children may have the benefit of soothing, refreshing Benaris, a special formula has been created for them.

Benaris relieves and prevents colds, coughs, eases headaches of those who suffer from sinus ailments, catarrh, or other nasal disturbances. Very soothing and refreshing for people who smoke. People who have an inflamed throat or tonsils should insert a dropperful of Benaris directly into the throat. Very beneficial for those who use their voice.

To Singers, Benaris will prove invaluable in clearing the nasal and accessory passages, thus restoring and increasing the resonance, volume and quality of the voice. Permits greater diaphragmatic breathing, with the result of finer head tones. Benaris aids in eliminating the necessity of forcing the voice, and many forms of hoarseness.

To lawyers, speakers, teachers, salesmen, and all those dependent upon their voices in their profession, or anyone desiring to improve his voice, Benaris will be found of great benefit because of its cleansing quality which penetrates the membranes of the nose and the entrance to the sinuses.

Use Benaris every night on retiring to secure natural and comfortable rest. Benaris will loosen a congested nose which causes mouth breathing and prevents relaxation and hinders proper sleep. Use Benaris every morning on rising, to assure a healthful, efficient day.

* * * upon using Benaris they will discover how easy it is to remedy and eliminate the above ailments. Benaris will bring new *life and sensation* such as you have never realized before.

Benaris never fails to relieve sinus congestion.

Benaris is priceless. To ward off rose and hay fever treat mucous membrane frequently before attacking season. * * * Instant relief for headaches especially for over-indulgence.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set-out, the respondent has represented, directly or by implication, that the preparation "Benaris" is a competent and effective cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation and inflammation of the throat, inflamed and enlarged tonsils, hoarseness, rose or hay fever, and congestion of the nasal passages; that said preparation is an effective treatment for and will prevent rose or hay fever; that said preparation will neutralize the tissues and eliminate colds, and will in all cases relieve headaches, penetrate the openings to the sinuses, and relieve sinus congestion; that said preparation will assure a healthful, efficient day and bring new life and sensation to the user thereof, that by the use of said preparation greater diaphragmatic breathing can be obtained, resulting in finer head tones, and that said preparation will increase the resonance, volume, and quality of the voice.

PAR. 6. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact, said preparation is not a cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation or inflammation of the throat, inflamed or enlarged tonsils, hoarseness, rose or hay fever, or congestion of the nasal passages. Said preparation is not an effective treatment for, nor will it prevent rose or hay fever. Said preparation will not neutralize the tissues or eliminate colds. Said preparation will not in all cases relieve headaches or sinus ailments. The use of said preparation will not insure a healthful or efficient day, or bring new life or sensation to the user thereof. The use of said preparation will not cause greater

diaphragmatic breathing or result in finer head tones, or increase the resonance, volume, or quality of the voice.

Headaches are due to or persist because of various systemic or other disorders or conditions of the human body. Said preparation is not beneficial in the relief of headaches which are not due to congestion of the mucous membranes of the air passages. In many cases the sinus openings are clogged so as to prevent access of said preparation, and in such cases said preparation will not penetrate the openings to the sinuses or relieve sinus congestion.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said medicinal preparation containing drugs. As a direct result, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his said competitors who truthfully advertise the therapeutic value of their respective products. In consequence thereof, substantial injury has been, and is now 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. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 21, 1939, issued and served its complaint in this proceeding upon the respondent G. Bernardi, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 9, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 G. Bernardi is an individual and has his office and principal place of business at 1017 Euclid Avenue in the city of Cleveland, State of Ohio.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of selling and distributing a medicinal preparation containing drugs designated "Benaris." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of Ohio to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Ohio, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation 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 said business, respondent is, and has been at all times referred to herein, in competition with other individuals and with corporations, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of products designed and used for the same purposes for which respondent recommends the use of the preparation Benaris.

PAR. 4. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertise-

ments concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

For colds, chronic colds, catarrh, bronchitis and laryngitis, use that soothing, refreshing formula, Benaris. Benaris not only helps to cure, but prevents colds. Smokers find that it relieves the tendency to dryness and headaches.

If you're troubled with chronic colds, and nose and throat infections, here's something you should know about. Benaris, spelled B-e-n-a-r-i-s, the development of a well-known concert singer, who for 23 years was unable to carry on his work. For this reason Benaris is especially recommended to those who are dependent on their voices a great deal. People who smoke find that Benaris relieves the tendency to dryness, and headaches. Those having enlarged tonsils, who wish to keep their throats, and voices in good condition should apply a few drops of Benaris on the back part of the tongue, especially in the morning. This refreshens and neutralizes the tissues. Bronchitis and laryngitis may likewise be treated in the same manner.

When a head cold comes on, use Benaris immediately. It acts instantly, relieving headaches, catarrh, bronchitis and laryngitis. Benaris is acclaimed for its remarkable cleansing and healing power. It keeps your nasal passages open, eliminates colds, and results in better health.

Many people suffer unnecessarily from sinus ailments during the cold season—unaware that a new practical, and lasting preparation, called Benaris, has been developed to give quick relief. Thousands have used this unusual formula and found that Benaris checks, and relieves colds, headaches, catarrh, bronchitis, and laryngitis. Benaris is compounded from the very finest ingredients—and is acclaimed for its remarkable cleansing power, yet it never irritates. It relieves unpleasant irritation and inflammation of the throat, resulting in an instant improvement in the voice. Benaris will also relieve the difficulties caused by mouth breathing, when due to nasal congestion. In order that your children may have the benefit of soothing, refreshing Benaris, a special formula has been created for them.

Benaris relieves and prevents colds, coughs, eases headaches of those who suffer from sinus ailments, catarrh, or other nasal disturbances. Very soothing and refreshing for people who smoke. People who have an inflamed throat or tonsils should insert a dropperful of Benaris directly into the throat. Very beneficial for those who use their voice.

To singers, Benaris will prove invaluable in clearing the nasal and accessory passages, thus restoring and increasing the resonance, volume and quality of the voice. Permits greater diaphragmetic breathing, with the result of finer head tones. Benaris aids in eliminating the necessity of forcing the voice, and many forms of hoarseness.

To lawyers, speakers, teachers, salesmen, and all those dependent upon their voices in their profession, or anyone desiring to improve his voice, Benaris will be found of great benefit because of its cleansing quality which penetrates the membranes of the nose and the entrance to the sinuses.

Use Benaris every night on retiring to secure natural and comfortable rest, Benaris will loosen a congested nose which causes mouth breathing and prevents relaxation, and hinders proper sleep. Use Benaris every morning on rising, to assure a healthful, efficient day.

* * * upon using Benaris they will discover how easy it is to remedy and eliminate the above ailments. Benaris will bring new *life and sensation* such as you have never realized before.

Benaris never fails to relieve sinus congestion.

Benaris is priceless. To ward off rose and hay fever treat mucous membrane frequently before attacking season. * * * Instant relief for headaches especially for over-indulgence.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set-out, the respondent has represented, directly or by implication, that the preparation "Benaris" is a competent and effective cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation and inflammation of the throat, inflamed and enlarged tonsils, hoarseness, rose or hay fever, and congestion of the nasal passages; that said preparation is an effective treatment for and will prevent rose or hay fever; that said preparation will neutralize the tissues and eliminate colds, and will in all cases relieve headaches, penetrate the openings to the sinuses, and relieve sinus congestion; that said preparation will assure a healthful, efficient day and bring new life and sensation to the user thereof; that by the use of said preparation greater diaphragmatic breathing can be obtained, resulting in finer head tones, and that said preparation will increase the resonance, volume, and quality of the voice.

PAR. 6. The aforesaid statements and representations by respondent, used and disseminated in the manner above described, are false and misleading and constitute false advertisements. In truth and in fact, said preparation is not a cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation or inflammation of the throat, inflamed or enlarged tonsils, hoarseness, rose or hay fever, or congestion of the nasal passage. Said preparation is not an effective treatment for, nor will it prevent rose or hay fever. Said preparation will not neutralize the tissues or eliminate colds. Said preparation will not in all cases relieve headaches or sinus ailments. The use of said preparation will not insure a healthful or efficient day, or bring new life or sensation to the user thereof. The use of said preparation will not cause greater diaphragmatic breathing or result in finer head tones, or increase the resonance, volume, or quality of the voice.

Headaches are caused by various systemic or other disorders or conditions of the human body. Said preparation is not beneficial in the

relief of headaches which are not due to congestion of the mucous membranes of the air passages. In many cases the sinus openings are clogged so as to prevent access of said preparation, and in such cases said preparation will not penetrate the openings to the sinuses or relieve sinus congestion.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of respondent's said medicinal preparation containing drugs. As a direct result, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his said competitors who truthfully advertise the therapeutic value of their respective products. In consequence thereof, substantial injury has been and is now 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, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and hearing as to said facts 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, G. Bernardi, an individual, his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the

purchase of his medicinal preparation now designated "Benaris" or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said name or any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or indirectly:

1. That said preparation is a cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, hoarseness, rose or hay fever, irritation or inflammation of the throat, inflamed or enlarged tonsils, or congestion of the nasal passages.

2. That the use of said preparation neutralizes the tissues or eliminates colds or will insure a healthful or efficient day or bring new life or sensation to the user thereof.

3. That the use of said preparation causes greater diaphragmatic breathing, or results in finer head tones or increases the resonance or volume or quality of the voice.

4. That said preparation will relieve headaches unless such representation is limited to headaches which are due to congestion of the mucous membranes of the air passages.

5. That said preparation will penetrate the openings to the sinuses or relieve sinus congestion unless such representations are limited to those cases in which the openings to the sinuses are not clogged so as to prevent the penetration therein of said preparation.

6. That said preparation is an effective treatment for, or will prevent, rose or hay fever.

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 setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

EUGENE H. HUNTER AND RAE LAMARR HUNTER, TRADING AS THE FLORACUBE 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 3284. Complaint, Dec. 17, 1937—Decision, Sept. 8, 1939

Where two individuals engaged in advertisement, sale, and distribution of medicinal preparation designated as "Floracubes" and, as thus engaged, in selling said product to purchasers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like medicinal preparations and of preparations designed for treatment of same ills, maladies, and conditions for which their product was recommended, and including many who sell and distribute, in commerce among the various States and in said District, such various preparations and do not misrepresent the properties, therapeutic virtues, and functions, uses, or effects thereof—

Represented, in letters, circulars, pamphlets, and other advertising media published and circulated throughout the country, that preparation in question was a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay, nervousness, rheumatism, ailments common to old age, high blood pressure, arthritis, heart trouble, weak eyes, and numerous other ailments and conditions, and for all common and annoying diseases, which would eliminate the cause of aforesaid ailments and conditions, facts being said "Floracubes" constituted nothing more than a laxative or purgative, depending upon amount, and therapeutic value thereof was limited to temporary relief of constipation, and it would not prevent, cure, eliminate, or rid the body of any disease, disorder, or malady, or of the causes of said ailments and conditions, and it was not a cure or remedy therefor, as above claimed;

With capacity and tendency to mislead and deceive members of public into erroneous and mistaken belief that said preparation was a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, and the various other ailments and conditions claimed and indicated as above set forth, including "loss of vitality" and "all common and annoying diseases," and that it would eliminate causes thereof, and to induce members of public to buy and use said preparation because of such erroneous belief thus engendered, and to divert unfairly trade to them from competitors engaged in the sale of competing preparations in commerce:

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

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. LeRoy Reames, of Los Angeles, 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 Eugene H. Hunter and Rae LaMarr Hunter, individually and trading as The Floracube Co., 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. Respondents, Eugene H. Hunter and Rae LaMarr Hunter are individuals trading and doing business under the name "The Floracube Company, Inc.," and having their office and principal place of business located at 2133 Sunset Boulevard, in the city of Los Angeles, in the State of California. They are now, and for more than 1 year last past have been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as Floracubes. Respondents cause, and for several years last past have caused, said preparation, when sold, to be shipped from Los Angeles, Calif., to the purchasers thereof located in the various States of the United States other than the State of origin of such shipments, and in the District of Columbia. There is now, and has been for several years last past, a course of trade and commerce in said preparation sold by said respondents 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, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like medicinal preparations and other preparations designed for the treatment of the same ills, maladies, and conditions for which respondents' product is recommended in commerce 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, in soliciting the sale of and selling said preparation "Floracubes," represent, and during the time herein mentioned have represented, in letters, circulars, pamphlets, and other advertising media, having interstate circulation, as follows:

Eliminate body ailments by controlling overacidity, constipation, stomach, and intestinal disorders. Get rid of waste acids and attain better health. Floracubes eliminate food decay and food fermentation, which are the causes of headaches, nervousness, rheumatism, and many other disorders.

Food decay within your body, eliminate it and renew health. Food decay produces destructive acids and wastes which have accumulated within the body since childhood and are the main causes of declining age, physical ailments, and diseases. * * * Eliminates food decay, its causes and effects, overacidity, constipation, colitis, digestive disorders, rheumatics, and many other distressing conditions.

Your life depends upon clean blood. Science now offers you a sure, safe method of eliminating all kinds of body ailments without diet or exercise.

Eliminate destructive acids and waste produced by food decay within the body, which are the primary causes of all body ailments, diseases, and old age. Why struggle with diets, why suffer from effects of food decay when by applying one simple law of Nature, the ravages of body ailments, disease, and old age can be eliminated.

Floracubes are insoluble but break down into microscopic particles that mix with the wastes in the colon and check excessive absorption of decomposed minerals. Keep in mind that when Decay Acids are kept out of the body and billions of Food Decay bacteria are eliminated daily along with food wastes there will be only one answer—abundant Health!

Floracubes * * * eliminate destructive acids and wastes which have accumulated within the cells and tissues since childhood and are the primary causes of body disorders such as constipation, digestive and intestinal disorders, rheumatics, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver, kidney, and bladder trouble, declining age, loss of gland stamina, vitality, etc.

All of said representations and statements, together with other statements not herein detailed, purport to be descriptive of respondent's preparation, and the beneficial results that may reasonably be expected by the use of said preparation. In and by such representations respondents represent that said preparation is a competent, adequate, and effective treatment and remedy for the cure of constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases," and that said preparation will eliminate the cause of such ailments and conditions.

PAR. 3. The representations made by the respondents in aid of the sale of their Floracubes are grossly exaggerated, false, misleading, and incorrect. In truth and in fact Floracubes are nothing more than a laxative or purgative depending upon the amount ingested. The therapeutic value of said product is limited to the relief of temporary constipation and it will not prevent, cure, eliminate, or rid the human body of any disease, disorder, or malady or of the causes of such ailments and conditions.

PAR. 4. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in com-

merce similar medicinal preparations, and other preparations designed for the same general purposes and uses who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses, or effects of their said competing products.

PAR. 5. The representations as hereinabove set forth and other similar representations made by respondents have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that said preparation is a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," "dizzy spells," "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases" of the human body and will eliminate the causes of such ailments and conditions. The said representations of respondents have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of the erroneous beliefs engendered as above set forth and to unfairly divert trade to said respondents from competitors engaged in the sale of competing preparations in commerce among and between the various States of the United States and in the District of Columbia. Thereby substantial injury has been 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.

PAR. 6. The above alleged acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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 December 17, 1937, issued and on February 7, 1938, served its complaint in this proceeding upon respondents Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube 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 of said complaint and the filing of said respondents' answer thereto, 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 fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission in 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. Respondents, Eugene H. Hunter and Rae LaMarr Hunter are individuals trading and doing business under the name "The Floracube Company, Inc." Their office and principal place of business is located at 2133 Sunset Boulevard, in the city of Los Angeles, in the State of California. They are now, and for more than 1 year last past have been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as Floracubes. For several years last past respondents have caused, and now cause, said preparation, when sold, to be shipped from Los Angeles, Calif., to purchasers of said product located in various States of the United States, and in the District of Columbia. There has been for several years last past, and is now, a course of trade and commerce in said preparation sold by said respondents between and among the various States of the United States, and in the District of Columbia. During all the times mentioned herein respondents have been in substantial competition in commerce as herein set out with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like medicinal preparations and other preparations designed for the treatment of the same ills, maladies, and conditions for which respondents' product is recommended.

PAR. 2. During the time herein mentioned, respondents, in the course and conduct of their business as described in paragraph 1 hereof, have solicited the sale of and sold said preparation "Floracubes," by way of letters, circulars, pamphlets, and other advertising media, published and circulated throughout the country. In said ways and by said means, respondents have made many representations of which the following are typical:

Eliminate body ailments by controlling overacidity, constipation, stomach, and intestinal disorders. Get rid of waste acids and attain better health. Floracubes eliminate food decay and food fermentation, which are the causes of headaches, nervousness, rheumatism, and many other disorders.

Food decay within your body, eliminate it and renew health. Food decay produces destructive acids and wastes which have accumulated within the body since childhood and are the main causes of declining age, physical ailments, and diseases. * * * Eliminates food decay, its cause and effects, overacidity, constipation, colitis, digestive disorders, rheumatics, and many other distressing conditions.

Your life depends upon clean blood. Science now offers you a sure, safe method of eliminating all kinds of body ailments without diet or exercise.

Eliminate destructive acids and waste produced by food decay within the body, which are the primary causes of all body ailments, diseases, and old age. Why struggle with diets, why suffer from effects of food decay when by applying one simple law of Nature, the ravages of body ailments, disease, and old age can be eliminated.

Floracubes are insoluble but break down into microscopic particles that mix with the wastes in the colon and check excessive absorption of decomposed minerals. Keep in mind that when Decay Acids are kept out of the body and billions of Food Decay bacteria are eliminated daily along with food wastes there will be only one answer—abundant Health!

Floracubes * * * eliminate destructive acids and wastes which have accumulated within the cells and tissues since childhood and are the primary causes of body disorders such as constipation, digestive, and intestinal disorders, rheumatism, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver, kidney, and bladder trouble, declining age, loss of gland stamina, vitality, etc.

All of said representations and statements together with other statements not herein detailed, purport to be descriptive of respondents' preparation, and the beneficial results that may reasonably be expected by the use of said preparation. In and by such representations respondents represent that said preparation is a competent, adequate, and effective treatment and remedy for the cure of constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, liver, kidney, and bladder trouble, "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases," and that said preparation will eliminate the cause of such ailments and conditions.

PAR. 3. The representations made by the respondents in aid of the sale of their Floracubes are grossly exaggerated, deceptive, misleading, and incorrect. In truth and in fact, Floracubes are nothing more than a laxative or purgative depending upon the amount ingested. The therapeutic value of said product is limited to the temporary relief of constipation and it will not prevent, cure, eliminate or rid the human body of any disease, disorder, or malady or of the causes of such ailments and conditions. Said product is not a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis,

heart trouble, weak eyes, "lack of pep," dizzy spells, "loss of gland stamina," liver, kidney and bladder trouble, "loss of vitality," stiff joints, and "all common and annoying diseases."

PAR. 4. There are among the competitors of respondents, mentioned in paragraph 1 hereof, many who sell and distribute in common among and between the various States of the United States and in the District of Columbia similar medicinal preparations and other preparations designed for the same general purposes, and uses who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses, or effects of their said products.

PAR. 5. The representations as hereinabove set forth and other similar representations made by respondents have had and now have the capacity and tendency to mislead and deceive members of the public into the erroneous and mistaken belief that said preparation is a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases" of the human body and will eliminate the causes of such ailments and conditions. The said representations of respondents have had and now have the capacity and tendency to induce members of the public to buy and use said preparation because of the erroneous beliefs engendered as above set forth and to unfairly divert trade to said respondents from competitors engaged in the sale of competing preparations 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, Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube Co., Inc., as herein found, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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 respondents, in which answer respondent's admit all the material allegations of fact set forth in said complaint, and state that they

waive all intervening procedure and further hearing as to said facts, 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 respondents, Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube Co., Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated as "Floracubes," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents' preparation has any therapeutic value other than as palliative in the treatment of constipation, or that said preparation is a cure or remedy for any disease, disorder, or malady, or that said preparation will prevent, eliminate, or rid the human body of any disease, disorder, or malady or the causes of such ailments and conditions.

2. Representing that respondents' preparation is a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, ailments common to old age, high blood pressure, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver trouble, kidney trouble, bladder trouble, loss of gland stamina, loss of vitality, stiff joints, and all common and annoying diseases, or constitutes a competent or effective treatment therefor.

It is further ordered, That the respondent 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

JEAN LAWRENCE, INDIVIDUALLY AND TRADING AS WELLS SALES COMPANY

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

Docket 3767. Complaint, Apr. 17, 1939—Decision, Sept. 8, 1939

Where an individual engaged in sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling, and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme for sale and distribution of such products to ultimate consumers wholly by lot or chance, and which included certain literature and instructions and push cards, order blanks, depictions of said merchandise, and circulars explaining plan of selling same and of allotting it as premiums or prizes to operators of said cards and to purchasing and consuming public under plan in accordance with which person selecting by chance from 64 feminine names displayed on card, name corresponding to that concealed under card's seal, received choice, in accordance with card's explanatory legend and as there described, of radio, automatic waffle iron, or Wm. A. Rogers Tableware, with tarnishproof chest, or Nesco Table Broiler-Griddle, and in accordance with which amount, if any, paid by customer for chance was contingent upon number secured by chance depending on disk of card pushed, and three numbers, as announced, and last sale entitled those securing said numbers or making such purchase to "$1.00 Wahl Eversharp Pencil"; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid or article of merchandise free and which of said articles of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with 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;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such products in preference to those offered and sold by his competitors aforesaid who do not use such or equivalent method and with effect through use of such method and because of said game of chance of diverting unfairly trade in commerce to him from his said competitors who do not use such or equivalent method:

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

Mr. L. P. Allen, Jr. for the Commission.
Glickman & King, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Jean Lawrence, individually and trading as Wells Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Jean Lawrence, is an individual trading as Wells Sales Co. His principal office and place of business was formerly located at 201 North Wells Street, Chicago, Ill., but he is now located at 4930 North Monticello Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States and 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 by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 furnishes, and 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 sold and distributed to the ultimate consumers

thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 64 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 64 small, partially perforated disks on the face of which is printed the word "push." 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES
CHOICE OF
(SEAL) ESQUIRE JR. RADIO
ESQUIRE TWIN AUTOMATIC
WAFFLE IRON
34-piece WM. A. ROGERS
TABLEWARE
(With Tarnishproof Chest)
NESCO TABLE BROILER-GRIDDLE
Numbers 11 to 29 pay what you draw
All numbers over 29 pay 29¢
No Higher
10—FREE NUMBERS—10
1-2-3-4-5-6-7-8-9-10 are FREE
4—ADDITIONAL GIFTS—4
Numbers 9-19-29 and last sale each
receive $1.00 Wahl Eversharp Pencil

Sales of respondent's merchandise 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 and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of

a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes and has furnished 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1939, issued and served its complaint in this proceeding upon respondent, Jean Lawrence, an individual trading as Wells Sales Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 31, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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, Jean Lawrence, is an individual trading as Wells Sales Co. His principal office and place of business was formerly located at 201 North Wells Street, Chicago, Ill., but he is now located at 4930 North Monticello Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States and 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 by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 furnishes, and has furnished, vari-

ous devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 64 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 64 small, partially perforated disks on the face of which is printed the word "push." 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES

CHOICE OF
ESQUIRE JR. RADIO
ESQUIRE TWIN AUTOMATIC
WAFFLE IRON
34-piece WM. A. ROGERS
TABLEWARE
(With Tarnishproof Chest)
NESCO TABLE BROILER-GRIDDLE
Numbers 11 to 29 pay what you draw
All numbers over 29 pay 29¢
No Higher
10—FREE NUMBERS—10
1-2-3-4-5-6-7-8-9-10 are FREE
4—ADDITIONAL GIFTS—4
Numbers 9-19-29 and last sale each
receive $1.00 Wahl Eversharp Pencil

Sales of respondent's merchandise 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 and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise

free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 Commisison upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Jean Lawrence, individually and trading as Wells Sales Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, waffle irons, griddles, tableware, automatic pencils, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do fortwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, so as to enable such persons to dispose of or sell any merchandise 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise 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 the 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 this order.

IN THE MATTER OF

AMERICAN OIL COMPANY AND GENERAL FINANCE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARAGRAPHS (A) AND (F) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3843. Complaint, July 7, 1939—Decision, Sept. 9, 1939

Where a corporation engaged in distributing and selling, in commerce, gasoline and other petroleum products in various States and in the District of Columbia, and in delivering such products in said District at gasoline stations therein in tank wagons from its bulk plants in State of Virginia, and in selling its said products in said District to various dealer purchasers, including corporate concern which (1) was engaged in business, among other things, of selling and financing sale of taxicabs and in the leasing and operating of a gasoline station in said District at which it sold gasoline and petroleum products of said corporation at retail to taxicab operators and to general public, and which concern (2) purchased products of such corporation from it under provisions of so-called Commercial Consumer Contracts and agreements of said corporation, by which concession of 1⅝ cents per gallon from the posted retail tank-wagon price, subject to certain minimum and maximum charge, was on specific condition that all products thus purchased were for buyer's own consumption and not for resale in whole or in part to purchaser's employees or to any other person, firm, or corporation—

Discriminated in price between said concern and other retail gasoline dealers in said District who purchased and dealt in gasoline and petroleum products of said corporation, through sale, at prices substantially lower than those charged by it to other retail dealers, of its said products to such concern, which resold products, thus purchased by it at said price concessions on express and specific condition that they were for purchaser's own consumption only and not for resale, to the public and to its owned and controlled taxicabs; to the injury of other retail gasoline dealers in competition with it who were required to and did pay said corporation and other suppliers full posted retail dealer tank-wagon prices applicable on date and at point of delivery.

With result that effect of such discrimination in price had been and might be substantially to lessen competition in line of commerce in which said concern and other retail gasoline dealers in said District were engaged, and to injure, destroy and prevent competition with said corporation, and with said concern which received benefit of discrimination aforesaid:

Held, That such discrimination in price in sale of the gasoline and petroleum products of said corporation between said concern and other competing retail gasoline dealers in said District, constituted a violation of section 2 (a) of the Clayton Act, as amended by Robinson-Patman Act; and

Where said concern engaged as aforesaid, and subsequent to the execution of the first of said contracts providing for such concessions on the express provision, above set forth, that purchase was for buyer's own consumption and not for resale, and well knowing that prices thus fixed in said various

contracts, and thereafter paid to said corporation, were lower than those at which said corporation's products had been sold by it during period involved to other retail gasoline dealers in said District, many of which competed with the station or stations operated by said concern in sale of said corporation's products—

Knowingly induced such discrimination in price and knowingly received, during period aforesaid, benefit thereof:

Held, That such knowing inducement and receipt of such price discrimination as aforesaid, constituted violation of section 2 (f) of Clayton Act, as amended.

Mr. F. Hier and *Mr. J. W. Carter, Jr.* for the Commission.

Mr. Charles Henry Thompson, of Baltimore, Md., for respondents.

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" (the Clayton Act—U. S. C. title 15, sec. 13), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Oil Co., a corporation, has violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended, and that General Finance, Inc., has violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended, hereby issues its complaint stating its charges in those respects as follows:

PARAGRAPH 1. Respondent American Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with principal office located in the American Building, Baltimore, Md. Said respondent is engaged chiefly in the business of producing, manufacturing, distributing, and selling gasoline and other petroleum products in various States of the United States and in the District of Columbia. Gasoline manufactured and sold by said respondent is mostly of two grades, namely, a so-called "high-test" gasoline sold under the trade name "Amoco," and a "standard" gasoline sold under the trade name "American" or "Orange American." Gasoline sold and delivered by said respondent to gasoline stations in the District of Columbia is transported into the District of Columbia in tank wagons from said respondent's bulk plants in the State of Virginia and delivered from said tank wagons.

PAR. 2. Respondent General Finance, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal office and place of business located at 2221 Fourteenth Street NW., Washington, D. C. Said respondent is engaged in the business, among other things, of

selling and financing the sale of taxicabs, and also leases and operates two gasoline stations, one located at the corner of Fourteenth Street and Florida Avenue NW., Washington, D. C., and another located at the corner of Sixth Street and Rhode Island Avenue NW., Washington, D.C., at which stations it engages in the business of selling "Amoco" and "American" gasoline at retail to taxicab operators and to the public.

PAR. 3. The said gasoline stations operated by respondent General Finance, Inc., as set forth in paragraph 2 hereof, are engaged in competition in the sale of gasoline at retail with numerous other dealers in gasoline in the District of Columbia selling American Oil Co. gasoline, and with gasoline dealers selling the gasoline of other producers.

PAR. 4. On or about July 17, 1936, respondent American Oil Co. entered into a contract for the sale of gasoline with six corporations, four doing business in Washington, D. C., and two in Baltimore, Md., all engaged in the business of organizing, promoting, and serving associations or groups of taxicab operators in those cities. A copy of said contract, marked "Exhibit A" is annexed hereto and made a part hereof.[1] The word "Corporation" in the name "City Cab Corporation, Inc." was inserted in said contract by mutual error of the parties and said name was intended to be and describe City Cab Association, Inc., of Washington, D. C.; and said contract has at all times been so understood and treated by the parties. Said contract provides for the sale of "Amoco" and "American Gas" by tank-wagon delivery in the District of Columbia at a price of 5⅝ cents per gallon below the current posted retail service-station price for said products, said price being from 1⅝ cents to 2⅛ cents lower than the posted tank-wagon prices charged by respondent American Oil Co. for "Amoco" and "American Gas" sold by it to other retail gasoline station operators in the District of Columbia.

PAR. 5. The business policies and activities of all of the taxicab companies named in said contract were at the time of the execution of said contract controlled by respondent General Finance, Inc., or by its officers, Herbert Glassman and Edward C. Ostrow, through stock ownership or voting control and through ownership of the majority of the taxicabs operated under the names of said companies. The gasoline used in taxicabs which are owned by or operated under the names of said companies, is purchased by the operators of such taxicabs, and is not supplied by said companies or by respondent General Finance, Inc., except by sale.

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[1] See p. 868.

PAR. 6. Subsequent to the execution of said contract, and during the years 1937, 1938, and 1939, respondent American Oil Co. has sold and delivered large quantities of "Amoco" and "American" gasoline, pursuant to the terms of sale and at the prices specified in said contract of July 17, 1936, to respondent General Finance, Inc. Such deliveries have averaged more than 100,000 gallons per month during said period, and have been made at the retail gasoline stations operated by General Finance, Inc., at Fourteenth Street and Florida Avenue NW., and Sixth Street and Rhode Island Avenue NW., Washington, D. C., as aforesaid. American Oil Co. has billed said gasoline to General Finance, Inc., and payment for the same has been made by General Finance, Inc. The gasoline so purchased by General Finance, Inc., has been resold by it at retail to taxicab operators and to the public generally. The fact of such resale has at all times been well known to respondent American Oil Co., although the said contract provides that the products purchased thereunder "are for Buyer's own consumption only and not for resale, in whole or in part, to Buyer's employees or any other person."

PAR. 7. By selling its "Amoco" and "American" gasolines to respondent General Finance, Inc., at the prices stated in paragraph 4 hereof, and by contracting to sell its said gasolines in the District of Columbia to City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., at said prices, which prices are substantially lower than the prices charged by it for said gasolines, respectively, to other retail dealers in gasoline in the District of Columbia, respondent American Oil Co. has discriminated in price, and is discriminating in price, between respondent General Finance, Inc., City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., respectively, and other retail gasoline dealers in the District of Columbia who purchase and deal in said American Oil Co. products. The effect of such discrimination in price has been and may be substantially to lessen competition and tend to create a monopoly in commerce in and with the District of Columbia in the sale and distribution of gasoline, and to injure, destroy, and prevent competition with respondent American Oil Co. and with its said customers receiving the benefit of said discrimination.

PAR. 8. Said contract of July 17, 1936, was executed on behalf of five of the six taxicab companies named as buyers by Herbert Glassman and Edward C. Ostrow, who are president and treasurer, respectively, of respondent General Finance, Inc. Respondent General Finance, Inc., and its said officers, at the time of the execution of said contract and at all times since that date, have well known that the

prices for "Amoco" and "American" gasoline fixed in said contract and thereafter paid by said respondent to American Oil Co. for said gasoline, as hereinbefore set forth, were and are from 1⅝ cents to 2⅛ cents lower than the prices at which "Amoco" and "American" gasoline have been sold by American Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Amoco" and "American" gasoline with the stations operated by General Finance, Inc. Said discrimination in price was knowingly induced, and at all times herein mentioned has knowingly been received, by respondent General Finance, Inc. Said discrimination in price, as more fully set forth in the preceding paragraphs hereof, is prohibited by subsection (a) of section 2 of said Clayton Act, as amended.

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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, Sec. 13), the Federal Trade Commission, on July 7, 1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging respondent American Oil Co. with violating the provisions of paragraph (a) of section 2 of the said act as amended, and charging respondent General Finance, Inc., with violating the provisions of paragraph (f) of section 2 of said act as amended. After the issuance and service of said complaint, answers admitting the material allegations set forth in the complaint to be true were filed on behalf of the respondents, American Oil Co. and General Finance, Inc. Thereafter said respondents filed with the Commission waivers of all subsequent and intervening procedure and any further hearing as to the facts and any notice thereof.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the admissions of fact made in said answers filed thereto, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

Paragraph 1. That the respondent American Oil Co. is a corporation under the laws of the State of Maryland, with its principal office

located in the American Building, Baltimore, Md., and is engaged in the business of distributing and selling in commerce gasoline and other petroleum products in various States of the United States and in the District of Columbia, said gasoline and petroleum products sold in the District of Columbia being delivered at gasoline stations therein in tank wagons from respondent's bulk plants in the State of Virginia.

PAR. 2. That respondent General Finance, Inc., is a corporation under the laws of the State of Delaware, with its principal office and place of business at 2221 Fourteenth Street NW., Washington, D. C., and is engaged in the business, among other things, of selling and financing the sale of taxicabs, and the leasing and operating of a gasoline station located at the corner of Fourteenth Street and Florida Avenue NW., Washington, D. C., at which station it sells gasoline and petroleum products of the respondent American Oil Co. at retail to taxicab operators and to the general public. That respondent General Finance, Inc., operated for a period of 3 weeks, from August 25 to September 16, 1938, an additional gasoline station at the corner of Sixth Street and Rhode Island Avenue NW., Washington, D. C., but that since September 16, 1938, said respondent General Finance, Inc., has not operated said station.

PAR. 3. That respondent General Finance, Inc., as operator of the said gasoline station at Fourteenth Street and Florida Avene NW., Washington, D. C., in the sale of gasoline and petroleum products at retail, is in competition with numerous other station operators and retail dealers in gasoline and petroleum products in the District of Columbia selling the gasoline and petroleum products of the respondent American Oil Co., and also in competition with station operators and retail dealers selling the gasoline and petroleum products of other suppliers.

PAR. 4. That on or about July 17, 1936, respondent American Oil Co. entered into a contract with six corporations, to wit: General Taxicab, Inc., and Sun Cab Co., Inc., doing business in Baltimore, Md.; and City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., doing business in Washington, D. C., for the sale of gasoline. All of these corporations were and are engaged in the business of organizing, promoting, and servicing associations or groups of taxicab operators in Baltimore and Washington. Said contract provided for the sale of gasoline by the respondent American Oil Co. to said six corporations at a price of 1⅝ cents per gallon less than the posted retail tank-wagon price per gallon charged by respondent American Oil Co., to undivided dealer accounts, on the date of delivery, subject,

however, to a minimum of 8½ cents per gallon and a maximum of 11 cents per gallon. Said contract was designated by respondent American Oil Co. as a Commercial Consumer Contract, and provided specifically that all products purchased thereunder were for the purchaser's own consumption and not for resale in whole or in part to the purchaser's employees or any other person, firm, or corporation.

PAR. 5. That subsequent to the execution of said contract, and during the year 1937 and part of the year 1938, respondent American Oil Co. sold and delivered in its tank wagons from its bulk plant in the State of Virginia large quantities of its gasoline and petroleum products pursuant to the terms of sale and at the prices specified in said contract. Deliveries were made to the said gasoline station operated by respondent General Finance, Inc., at Fourteenth Street and Florida Avenue NW., said deliveries averaging more than 100,000 gallons per month and payment therefor being made by the respondent General Finance, Inc., directly to the respondent American Oil Co. On or about July 1, 1938, respondent American Oil Co. having previously ascertained that said deliveries hereinabove referred to had in fact been paid for by the respondent General Finance, Inc., entered into a contract with respondent General Finance, Inc., for the sale of its gasoline and petroleum products, which contract contained the same terms of sale, prices, and conditions as said contract of July 17, 1936, hereinabove referred to in paragraph 4 hereof. Thereafter, respondent American Oil Co. sold and delivered large quantities of its gasoline and petroleum products to respondent General Finance, Inc., at said gasoline station at Fourteenth Street and Florida Avenue NW., under and pursuant to the terms of sale and at the prices specified in the said contract of July 1, 1938. It also sold and delivered 19,000 gallons of its gasoline and petroleum products under said contract of July 1, 1938, from August 25, 1938, to September 16, 1938, to a gasoline station located at Sixth and Rhode Island Avenue NW., Washington, D. C., operated by the respondent General Finance, Inc., but respondent American Oil Co. discontinued sale and deliveries to said station at Sixth Street and Rhode Island Avenue NW., on and after September 16, 1938.

PAR. 6. That the gasoline and petroleum products so purchased by respondent General Finance, Inc., since April 1, 1937, were resold by it at retail to taxicab operators and to the public generally at said gasoline station at Fourteenth Street and Florida Avenue NW., Washington, D. C., and also from August 25, 1938, to September 16, 1938, at said additional gasoline station located at Sixth Street and Rhode Island Avenue NW., Washington, D. C., and the fact of such resale became known to respondent American Oil Co., in August

1938. Whereupon respondent American Oil Co., required respondent General Finance, Inc., to execute a dealer contract for the purchase of all gasoline to be resold by said respondent General Finance, Inc., to the general public, which said dealer contract was executed by respondent General Finance, Inc., and respondent American Oil Co. on September 1, 1938, the terms of which require respondent General Finance, Inc., to pay respondent American Oil Co. for all gasoline thereafter purchased at its regular undivided dealer tank-wagon prices for the particular products purchased, applicable on date of delivery. Thereafter, on September 8, 1938, said respondents American Oil Co. and General Finance, Inc., entered into an agreement supplemental to said contract of September 1, 1938, which said supplemental agreement provided that respondent General Finance, Inc., should pay for all gasoline purchased for resale at the current undivided dealer tank-wagon prices of respondent American Oil Co. prevailing in Washington, D. C., on date of delivery, and should pay for all purchases made for consumption in the taxicabs of said associations and its controlled taxicabs in Washington, D. C., at the prices and upon the terms and conditions of said Commercial Consumer Contracts of July 17, 1936, and July 1, 1938, and further provided that respondent American Oil Co. would bill respondent General Finance, Inc., for all purchases thereafter made at the regular undivided dealer tank-wagon prices for the particular products purchased, applicable on date of delivery, but at the end of each month would credit respondent General Finance, Inc., with the contract price differential between said regular undivided dealer tank-wagon price and said price fixed in the contracts of July 17, 1936, and July 1, 1938, upon the gallonage reported by respondent General Finance, Inc., to respondent American Oil Co. as having been supplied by said respondent General Finance, Inc., to taxicabs owned and/or controlled by it. Since September 8, 1938, respondent General Finance, Inc., has furnished to respondent American Oil Co. monthly statements showing gallonage supplied the said taxicabs and gallonage resold to the public generally, for which the full, regular, undivided dealer tank-wagon price has been collected. At the end of each month respondent American Oil Co. has credited the account of respondent General Finance, Inc., with the contract price differential upon the gallonage reported by respondent, General Finance, Inc., as supplied to taxicabs owned and/or controlled by it. Respondent, General Finance, Inc., admits in its substitute answer that the gasoline so purchased by it under said contract of September 1, 1938, and supplemental agreement of September 8,

1938, has been and is now being resold to the public and to its owned and/or controlled taxicabs.

PAR. 7. That respondent American Oil Co., by selling its gasoline and petroleum products to respondent General Finance, Inc., at prices which were substantially lower than the prices charged by it for said gasoline and petroleum products to other retail dealers in said products in the District of Columbia, has discriminated in price between respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia who purchase and deal in the gasoline and petroleum products of respondent America Oil Co., and the effect of such discrimination in price has been, and may be substantially to lessen competition in the line of commerce in which said respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia were engaged; to injure, destroy, and prevent competition with respondent American Oil Co. and with respondent General Finance, Inc., which received the benefit of such discrimination.

PAR. 8. That the prices fixed and agreed upon in said contracts of July 17, 1936, and July 1, 1938, were based on, and wholly contingent upon, the express and specific condition in said contracts that gasoline and petroleum products purchased thereunder were for the purchaser's own consumption only and not for resale by it; and that respondent General Finance, Inc., by reselling said gasoline and petroleum products so purchased under said contracts of July 17, 1936, July 1, 1938, and September 1, 1938, thus obtained from respondent American Oil Co. an unlawful price discrimination in its favor and to its benefit and to the injury of other retail gasoline dealers in competition with it who were required to and did pay respondent American Oil Co. and other suppliers the full posted retail dealer tank-wagon prices applicable on date of delivery at point of delivery.

PAR. 9. That respondent General Finance, Inc., subsequent to the execution of said contract of July 17, 1936, has well known that the prices for gasoline and petroleum products fixed in said contracts and subsequent contracts and thereafter paid to said respondent American Oil Co., were lower than the prices at which said gasoline and petroleum products of respondent American Oil Co. had been sold by it during the same period to other retail gasoline dealers in the District of Columbia, many of which such dealers competed with the station or stations operated by the respondent General Finance, Inc., in the sale of said gasoline and petroleum products of respondent American Oil Co., and said discrimination in price was knowingly

induced, and has knowingly been received, by said respondent General Finance, Inc., during the period aforesaid.

CONCLUSION

The Commission concludes that the respondent, American Oil Co., has discriminated in price in the sale of its gasoline and petroleum products between respondent General Finance, Inc., and other competing retail gasoline dealers in the District of Columbia, and that the effect of such discrimination may be substantially to lessen competition in the line of commerce in which said respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia are engaged, and to injure, destroy, or prevent competition with said respondents, in violation of paragraph (a) of section 2 of the said Clayton Act, as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent General Finance, Inc., knowingly induced and received, during the period aforesaid, the benefit of said price discrimination in violation of paragraph (f) of section 2 of said Clayton Act, as amended by the Robinson-Patman 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 filed thereto by the respondents, American Oil Co. and General Finance, Inc., admitting the material allegations of fact in the complaint to be true, and waiving all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to facts and its conclusions, which findings and conclusions are hereby made a part hereof, that said respondents have 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 by the Robinson-Patman Act approved June 19, 1936 (title 15, sec. 13).

It is ordered, That respondent American Oil Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, and delivery of its gasoline and petroleum products in interstate commerce and in the District of Columbia, do forthwith cease and desist (a) from the price discriminations found in paragraphs 7 and 8 of the aforesaid findings as to the facts and conclusion; and (b) from in any other manner, directly or indirectly, discriminating in price between respondent, General Finance, Inc., and other purchasers competi-

tively engaged with respondent General Finance, Inc., in the resale of its products of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent, or any of its customers, are engaged, or to injure, destroy, or prevent competition with respondent or its customers, except where such price differences make only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which said gasoline or petroleum products are to such purchasers sold or delivered.

It is further ordered, That the respondent General Finance, Inc., its officers, directors, representatives, agents, and employees do forthwith cease and desist, (a) from inducing or receiving the price discriminations found in paragraphs 7, 8, and 9 of the aforesaid findings as to the facts and conclusion; and (b) from in any other manner knowingly purchasing gasoline and petroleum products at prices which discriminate between it and other purchasers of such products of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy, or prevent competition with respondent or its customers except where such price differences make only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which said gasoline or petroleum products are to it or such other purchasers sold or delivered.

It is further ordered, That the said respondents American Oil Co. and General Finance, Inc., shall, within 60 days after service upon them of this order, file with the Commission their separate reports in writing setting forth in detail the manner and form in which they have complied with this order.

EXHIBIT A [1]

AMERICAN AMOCO GAS

CONTRACT OF SALE made this 17th day of July 1936, between THE AMERICAN OIL COMPANY, a Maryland corporation, hereinafter called "AMERICAN" and City Cab Corp., Inc., of Washington, D. C., General Taxicab, Inc., Washington, D. C., Prudom Cab Co., Inc., Washington, D. C., Harlem Taxicab Assn. Inc., Washington, D. C., General Taxicab Inc., Baltimore, Md. and Sun Cab Company, Inc., Baltimore, Md., hereinafter called "BUYER."

1. Sale; Products. AMERICAN agrees to sell and deliver to BUYER and BUYER agrees to purchase from AMERICAN, during the continuance of this agreement, all gasoline and motor fuel that BUYER shall require for use in automobiles and other motor vehicles owned and/or operated by BUYER, the gasoline and motor fuel to be delivered and the quantities thereof to be taken out hereunder by BUYER to be as follows:

Brands	Minimum quantity per year	Maximum quantity per year
	Gallons	*Gallons*
Amoco	200,000	400,000
American gas	1,800,000	2,600,000

All products purchased hereunder are for BUYER's own consumption only and not for resale, in whole or in part, to BUYER's employees or any other person, firm, or corporation.

2. Price. On all deliveries of gasoline and/or motor fuel hereunder BUYER agrees to pay AMERICAN in accordance with the attached schedule of prices (plus all taxes as hereinafter provided) applicable for the particular product delivered, at the time of delivery, in the territory in which delivery is made, said schedule being a part hereof as fully as if written herein.

3. Delivery. Deliveries of said products shall be made in approximately equal monthly quantities with reasonable promptness, by tank wagon into storage facilities to be provided by BUYER at Baltimore, Md. and Washington, D. C., but AMERICAN shall not be liable for any delay or failure to deliver due to fire, accidents, strikes, riots, interruptions or delay in transportation or any other condition beyond the control of AMERICAN.

4. Terms of Payment. Payment for all deliveries hereunder shall be for cash or upon such terms as AMERICAN's Credit Manager shall from time to time require.

[1] To complaint. See p. 859, supra.

5. Taxes, etc. BUYER agrees to assume and pay to AMERICAN all taxes, duties and other charges with respect to the manufacture, sale, delivery, or use of said products, which AMERICAN may be required to pay or collect under any municipal, State or federal law now in effect or hereafter enacted. All such taxes, duties and other charges shall be paid by BUYER to AMERICAN at the time of payment for products supplied hereunder and shall be added to invoices therefor.

6. Duration of Contract. This contract shall continue in effect for a period of three years beginning August 1st, 1936, and thereafter from year to year upon the same terms and conditions, subject, however, to termination by either party at the expiration of the original term hereof or any subsequent yearly period upon thirty (30) days' prior written notice from either to the other.

7. Entirety of Contract. This contract supersedes and cancels all agreements between the parties in respect of the purchase by BUYER and sale by AMERICAN of products covered hereby for delivery at the point(s) of delivery herein stated and without prejudice to accrued rights of either party under said superseded agreements. No prior stipulation, agreement or understanding of the parties or their agents in respect to subject matter of this contract shall be valid or enforceable unless embodied in this contract or covered by these provisions.

8. AMERICAN shall have the right to terminate this contract at any time after *August 1st, 1937*, on sixty (60) days' written notice to BUYER of its intention so to do.

9. This contract is executed in triplicate by both parties and shall be binding upon AMERICAN only when approved by its President or one of its Vice-Presidents or its General Sales Manager.

As witness the following signatures:

THE AMERICAN OIL COMPANY,
Witness: By: (s) JAS. S. CARNEY, *General Sales Manager.*
(s) C. H. THOMPSON.

GENERAL TAXICAB, INC. (Baltimore, Md.),
Attest: (s) HERBERT GLASSMAN, *President.*
(s) EDWARD C. OSTROW, *Secretary.*

SUN CAB COMPANY, INC. (Baltimore, Md.),
Attest: (s) HERBERT GLASSMAN, *President.*
(s) EDWARD C. OSTROW, *Secretary.*

CITY CAB CORPORATION, INC. (Washington, D. C.),
Attest: (s) HERBERT GLASSMAN, *President.*
(s) EDWARD C. OSTROW, *Secretary.*

GENERAL TAXICAB, INC. (Washington, D. C.),
Attest: (s) HERBERT GLASSMAN, *President.*
(s) EDWARD C. OSTROW, *Secretary.*

PRUDOM CAB COMPANY, INC. (Washington, D. C.),

Attest: (s) EDWARD C. OSTROW, *Vice-President.*
(s) HERBERT GLASSMAN, *Secretary.*

HARLEM TAXICAB ASSN., INC. (Washington, D. C.),
Attest: (s) R. L. GLOVER, *President.*
(s) ——— ———, *Secretary.*

(RIDER ATTACHED TO AND MADE A PART OF COMMERCIAL CONSUMER CONTRACT, FORM CC-1, DATED ———————————————————— BETWEEN THE AMERICAN OIL COMPANY AND CITY CAB CORPORATION, INC., GENERAL TAXICAB, INC., PRUDOM CAB CO., INC., HARLEM TAXICAB ASSN., INC., GENERAL TAXICAB INC., AND SUN CAB COMPANY, INC.)

The prices payable by BUYER for gasoline and/or motor fuel under the annexed contract shall be as follows:

AMERICAN GAS at AMERICAN'S full posted retail tank wagon price per gallon to "UNDIVIDED DEALER ACCOUNTS" at point of delivery on date of delivery, less a contract differential of One and five-eighths cents (1⅝¢) per gallon, subject, however, to a minimum of Five and one-half cents (5½¢) per gallon and a maximum of Eight cents (8¢) per gallon net to AMERICAN.

AMOCO-GAS at AMERICAN'S full posted retail tank wagon price per gallon to "UNDIVIDED DEALER ACCOUNTS" at point of delivery on date of delivery, less a contract differential of One and five-eighths cents (1⅝¢) per gallon, subject, however, to a minimum of Eight and one-half cents (8½¢) per gallon and a maximum of Eleven cents (11¢) per gallon net to AMERICAN.

For the purposes of correct construction of the price clause of this agreement, a dealer who actually handles and sells the petroleum products of AMERICAN only is classified as an "UNDIVIDED DEALER ACCOUNT." All other dealers are classified as "DIVIDED DEALER ACCOUNTS."

The foregoing price structure is intended to establish a price per gallon for gasoline and motor fuel purchased by BUYER from AMERICAN at five and five-eighths cents (5⅝¢) per gallon below the full posted retail service station price (including all taxes and without any discounts or allowances therefrom) of the Lord Baltimore Filling Stations, if any, on date of delivery in the particular city (Baltimore or Washington as the case may be) for the particular products supplied, subject, nevertheless, to the minimum net prices to AMERICAN, exclusive of all taxes, as above set forth.

IN THE MATTER OF

HARRY S. BENHAM, TRADING AS AMERICA'S MEDICINE AND NU-MODE COMPANY

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

Docket 3851. Complaint, July 15, 1939—Decision, Sept. 9, 1939

Where an individual engaged in sale and distribution of various medicinal preparations, in commerce among the various States and in the District of Columbia, including certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound"; in advertisements which he disseminated through the mails through insertions in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and in other ways, and which were intended and likely to induce purchase of said various preparations—

(*a*) Represented that said products, thus variously designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," were a competent and effective remedy for delayed menstruation, and were harmless and would accomplish results without pain or inconvenience, facts being they were not a competent and effective remedy for said condition and would not accomplish such results as above set forth, and were not safe and harmless in that said "XX Compound" contained aloes and oil of savin, and said "XXX Compound" contained extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual; and

(*b*) Failed to reveal, in advertisements disseminated as aforesaid, that use of said preparations, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of such false, deceptive, and misleading statements and representations, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such belief, to buy its said injurious, drug-containing preparations:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry S. Benham is an individual trading and doing business as America's Medicine & Nu-Mode Co., with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than one year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound" or "Kotess Periodic Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal 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 aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated and is now disseminating, and has caused and is

now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Told.—When delayed, don't be alarmed, discouraged or unprepared! You can now depend on this wonderful A. M. Periodic Relief Compound (Double XX Strength). Quick in action. Powerful, yet absolutely Safe, harmless, easy to take without pain or inconvenience. Produces unbelievable remarkable results, some say magic-like! Generally relieves the most puzzling, overdue, discouraging, suppressed, scanty, unnatural delays.

Triple XXX Strength for obstinate cases—$5.00.

When Nature Fails.—Nature may fail you and cause a long, overdue, unusual, unnatural, suppressed period——but don't fear, despair, or become despondent. Now at last you can rely on this amazing Nu-Mode Periodic Relief Compound for safe, secure, desired results generally quick, without pain or inconvenience. No longer need you be uncertain from month to month. Easy to take—absolutely harmless.

Triple XXX Strength for most puzzling obstinate cases only $4.00.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," are a competent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that America's Medicine XX Compound and Nu-Mode XX Compound contains aloes and oil of savin and said preparations, America's Medicine XXX Compound and Nu-Mode XXX Compound contain extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of these preparations under the conditions prescribed in said advertisements or under such conditions as are customary or

usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage and in those cases when either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, 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 and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1939, issued, and on July 18, 1939, served its complaint in this proceeding upon the respondent, Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respond-

ent'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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 Harry S. Benham is an individual trading and doing business as America's Medicine & Nu-Mode Co., with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," Nu-Mode XX Compound" or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal 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 aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission

Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Told.—When delayed, don't be alarmed, discouraged or unprepared! You can now depend on this wonderful A. M. Periodic Relief Compound (Double XX Strength.) Quick in action. Powerful, yet absolutely Safe, harmless, easy to take without pain or inconvenience. Produces unbelievable remarkable results, some magic-like! Generally relieves the most puzzling, overdue, discouraged, suppressed, scanty, unnatural delays.

Triple XXX Strength for obstinate cases—$5.00.

When Nature Fails.—Nature may fail you and cause a long, overdue, unusual, unnatural, suppressed period—but don't fear, despair, or become despondent. Now at last you can rely on this amazing Nu-Mode Periodic Relief Compound for safe, secure, desired results generally quick, without pain or inconvenience. No longer need you be uncertain from month to month. Easy to take—absolutely harmless.

Triple XXX Strength for most puzzling obstinate cases only $4.00.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," are a competent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that America's Medicine XX Compound and Nu-Mode XX Compound contains aloes and oil of savin and said preparations, America's Medicine XXX Compound and Nu-Mode XXX Compound contain extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of these preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage and in those cases when either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, 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 and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of medicinal preparations known or designated as America's Medicine XX Compound, Nu-Mode XX Compound, and Kotess Periodic Relief Compound, and America's Medicine XXX Compound, Nu-Mode XXX Compound, and Kotess Periodic Relief Compound, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparations which advertisements represent, directly or through implication that the use of said medicinal preparations constitutes a safe, competent, and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of these preparations may result in serious or irreparable injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order and if so, the manner and form in which he intends to comply; and that, within 60 days after the service upon him of this order said respondent shall 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

AVERBACH COMPANY, INC., MAID-O-BEST, INC., G. M. MOSES, AND ESTHER AVERBACH, MORRIS AVERBACH AND JEROME AVERBACH TRADING AS THE MURIEL COMPANY AND AMERICAN 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 3342. Complaint, Mar. 1, 1938—Decision, Sept. 11, 1939

Where a corporation which engaged in sale and distribution in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties, and business of which was taken over by a corporation organized and financed by an individual who was the moving and dominant spirit in connection with the conduct, affairs and operations of several trade name businesses, of said corporation, and of said acquiring corporation, organized and financed, as aforesaid set forth, by said individual and members of his family, who (1) were officers thereof and who, (2) along with president of said corporation first referred to, were variously engaged in direct and substantial competition with others engaged in sale and offer in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties of various kinds;

In selling products through medium of traveling salesmen, agents and solicitors, among whom they variously distributed bulletins and circulars as instructions in connection with sales talks to be made to housewives, customers and consumers throughout the various States—

(*a*) Represented that a fictitious person was its "Director of Sales," and that it had a national sales organization, through depictions in bulletins, circulars and instructions, as such "Director of Sales," of a supposed "J. M. Gebhardt," and through invitation to prospective salesmen to join its "national sales organization without risking one penny"; and

(*b*) Represented, as aforesaid, through use of words "Manufactured only by," followed by name and address of said corporation, and through such statements in such circulars as "Long-established manufacturer makes startling announcement," etc., "We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities," that it or they were the manufacturers of the products sold by them, and purchased as aforesaid;

Facts being individual depicted was not said supposed and fictitious "J. M. Gebhardt," but the then president and moving spirit in said corporation, and said corporation did not have, as thus implied or inferred, large selling organization, national in scope and character, nor own, operate, or control any mills, factory or laboratory wherein products which it sold and distributed were made or compounded, but such products were made or packed by individual who, as aforesaid, acquired control thereof and was engaged in such manufacture under separate trade name, and said corporation was not long-established manufacturer or business, had no manufacturer-backer, and did not purchase ingredients in tremendous quantities nor pack products distributed by it, but merely furnished bottles and labels

to individual aforesaid, who, as above set forth, prepared certain quantities which such corporation advertised and sold under such corporate or trade name;

(c) Set forth, in periodicals and advertising folders of wide interstate circulation, as the "regular retail prices" of the various extracts or flavors or products there offered, prices which were fictitious and greatly in excess of those at which said products ordinarily were sold, and in excess of prices at which their sale in usual course of trade was intended or contemplated; and

(d) Made such statements, in such periodicals and advertising folders, and in connection with such assorted offers of such various extracts or flavors, together with 1-pound can of Chocolate Toddy free, and with aggregate value of assortment arrived at as $3.70, as "You Sell it Complete For 97¢," "5 Big Bottles 47¢," "Sells at Sight For 97¢," "With Can of Chocolate Toddy Free!";

Facts being articles thus mentioned as being free were not in truth gratuitous and without cost to donee, but recipient thereof was required to purchase other articles in order to obtain free goods, and price or value was included in sum paid for other;

(e) Made use of term, in its advertising matter and price lists, "Vanilla Extract" to describe imitation vanilla flavor, and stated in advertising matter that "we are particular about the quality of such products as Vanilla beans, Vanillin, Coumarin, Glycerin, Lemon, Maple, Orange, and other commodities that go into the making of our flavorings," "* * * Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price. * * * composed of Vanillin * * * and a liberal quantity of pure vanilla made from the choicest vanilla beans";

Facts being said product first referred to was not true extract, but cheap flavoring compound which lacked alcohol content required as vehicle to carry genuine flavoring extract, it had not used "liberal quantity of pure vanilla" in preparation thereof, etc., and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" were composed largely of cheap, inferior ingredients, including synthetic chemical substitute suspended largely in cheap oils or gum emulsions instead of ethyl alcohol, recognized as most valuable and desirable vehicle used in dissolving and preserving food flavorings, and its said products in no manner equalled or approached quality and excellence claimed therefor;

(f) Represented, in circular, that its said products described as "exceptionally fine quality" and "made of purest ingredients," were "guaranteed to you and to your customers" and to "give complete satisfaction," failing which every penny involved in purchase price would cheerfully be refunded, and that such guarantee was "Backed By $3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution For This Purpose," and further referred thereto as "$3,000 Guarantee of Quality," and "Your Assurance of Success," etc., and urged its salesmen or agents to give customers such guarantee and emphasize its supposed financial backing;

Facts being products referred to were not made of purest ingredients, and were not strong and delicious, and said corporation did not retain in any bank, in a special account or otherwise, any such fund to guarantee its

products and refund purchase price, but sum referred to was withdrawn shortly after made, and bonds substituted therefor were also later withdrawn; and

Where individual above referred to, following the acquisition of the business of said corporation and continuance thereof under trade name used by him, and continued use, in connection with offer of his products, of same cuts and advertising matter theretofore employed by said corporation, and using said corporate name as trademark on products sold and advertised by him—

(*a*) Made such statements, in printed advertisements regarding his said products, as "Amazing Way to Earn Big Pay," "Up to $15 Every Day is Easy," etc., facts being it was not easy, or in fact hardly possible, for any representative to earn up to $15 every day nor any day in selling products in question;

(*b*) Made such statements as "We sell all over the United States in large quantities, therefore our purchasing power is great," and "Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you," facts being business in question was a relatively small one and did not and could not buy as aforesaid and accomplish such savings;

(*c*) Referred to his various food flavors as "High Quality Flavoring Extracts," etc., facts being they were not extracts dissolved and carried in alcoholic solution, but were made of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions, and oils and ingredients therein were not high quality or the purest and finest;

(*d*) Set forth, as aforesaid, in connection with his so-called "deals" or offers of flavoring compounds, "selling prices" or "values" which were fictitious and greatly in excess of prices at which such compounds were sold or intended to be sold; and

(*e*) Falsely represented therein as manufactured by company used by him as trade name in conduct of his said business, product advertised and designated as "Choc-O-Toddy"; and

Where corporation organized by aforesaid individual, as above set forth to take over and carry on business variously conducted as above indicated—

(*a*) Made such statements, with respect to supposed "free goods," as "Bib Apron Free," in connection with "Jack Foster's Famous 4 Bottle Deal," etc., or "Valuable Hosiery Gift Coupon Free!," etc., facts being such articles were not given away free but person was required to purchase "deal" in order to obtain bib apron or gift coupon, and price or value of alleged gift was included in sum obtained in each instance for particular "deal";

(*b*) Labeled as "composed of vanillin, coumarin, vanilla, and caramel," 8-ounce bottle of imitation vanilla flavor included in deal which it distributed among agents or purchasers in various States, and designed as "Special Advertising Offer," and labeled as "Terpeneless Lemon Flavor," 8-ounce bottle of such flavor included in deal in question, and as "Terpeneless Orange Flavor," 4-ounce bottle of such flavor, facts being said last two flavors were not made from essential oils as thus represented, but were composed largely of cheap, inferior ingredients including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equalled or approached quality and excellence claimed therefor in its advertising matter; and

(c) Set forth, in connection with its "free goods" and "special" offers and deals, including one for free apron and for "2 pair form-fashioned ladies' hose for only 49¢," that the time within which such offers and deals might be secured, or number of persons who might secure same, was limited, and that supposed offer of one dozen deals free with each purchase of twelve was "To help defray freight cost," facts being its offers were not thus limited and its said selling plans did not help purchaser defray such costs; and

Where other individuals interested and concerned in conduct of business here involved, as above noted—

(a) Falsely represented, through acts, practices and methods such as above set forth, to respective agents and to consuming public, that certain of their products were worth, and ordinarily sold for, retail prices stated, facts being they were not sold nor intended to sell at such prices;

(b) Falsely represented, as aforesaid, character, contents and value of said products;

(c) Made false and misleading statements and representations to effect that certain goods and articles of merchandise were being and would be given away free, when such was not the fact; and

(d) Made false and misleading statements and representations concerning above described guarantee fund of $3,000;

With result that public, through use of such false and misleading representations in their circulars and other advertising matter, passed on by agents and representatives to purchasing public, was deceived concerning character, quality, and value of their products and induced to purchase same under erroneous belief that they were of high grade and quality, containing only ingredients of purity and excellence claimed therefor, and of value claimed in fictitious prices quoted thereon, to the detriment and injury of sellers of similar products, and with capacity and tendency to divert to them trade of competitors engaged in selling in interstate commerce products of nature of those sold by them, to the substantial injury of competition in such commerce, and with result of placing in the hands of their dealers, agents and distributors instruments through which purchasing public was misled and deceived by them:

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. Arthur F. Thomas*, trial examiner.

Mr. Marshall Morgan and *Mr. Merle P. Lyon* for the Commission.

Stacker & Stacker, of St. Paul, Minn., for respondents.

Complaint

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Averbach Co., Inc., a corporation; Maid-O-Best, Inc., a corporation; G. M. Moses, an individual; and Esther Averbach, Morris Averbach and Jerome Averbach, individually, and trading variously under the

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

PARAGRAPH 1. Respondent Maid-O-Best, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business having been located at 695 Selby Avenue, St. Paul, Minn. Respondent Maid-O-Best, Inc., from August 29, 1932, until March 1, 1933, was engaged in the sale and distribution in interstate commerec of flavoring compounds, foodstuffs, toilet articles and novelties. Respondent G. M. Moses, during the period next above stated, was the president of Maid-O-Best, Inc., and directed the activities and controlled the business affairs and policies of said respondent corporation. About January 1, 1933, G. M. Moses resigned as president of Maid-O-Best, Inc., being succeeded in such office by one Esther Averbach, one Marie Ryan becoming vice president of said corporation.

Respondent Morris Averbach, in the year 1932, trading under the name of The Muriel Company at St. Paul, Minn., likewise became engaged in the manufacture and in the selling and the offering for sale in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. About July 1, 1935, respondent Morris Averbach, in connection with the sale of the herein mentioned products, began to trade under the name American Chemical Co. Thereafter, in July, 1936, the manufacturing businesses which had theretofore been conducted by G. M. Moses through Maid-O-Best, Inc., and by Morris Averbach employing the trade name companies, The Muriel Company and the American Chemical Co., were taken over by a corporation organized and financed by the said respondent Morris Averbach and members of his family under the corporate name and designation of Averbach Co., Inc. The officers of the said corporation are: Jerome Averbach, son of respondent Morris Averbach, president; Pearl Berkus, a relative of respondent Morris Averbach, vice president; and respondents Morris Averbach, secretary-treasurer. The present address under which the Averbach Co., Inc., is now operating through its own corporate name and the trade names, The Muriel Co., the American Chemical Co., and Maid-O-Best, Inc., is 1449 University Avenue, St. Paul, Minn.

The said Morris Averbach, is, and for several years last past has been, the moving and dominant spirit successively in connection with the conduct, affairs and operations of The Muriel Co., Maid-O-Best,

Inc., the American Chemical Co., and Averbach Co., Inc. Throughout the successive years in which the said Morris Averbach has been in the business of manufacturing flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds, the said respondent has dominated said companies and controlled their respective policies and activities.

In the course and conduct of their respective businesses, respondents Maid-O-Best, Inc., G. M. Moses, Morris Averbach, Jerome Averbach, Esther Averbach, and Averbach Co., Inc., have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in selling and offering for sale in interstate commerce flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds.

PAR. 2. In the course and conduct of their respective businesses as described in paragraph 1 hereof, the said named respondents have offered their products for sale and have sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers, through the medium of travelling salesmen, agents and solicitors. Said goods are and were shipped in response to orders taken by such travelling salesmen, agents, and solicitors and transported or caused to be transported in commerce among the several States of the United States.

In the course and conduct of their said businesses, as hereinafter related, respondents have caused various false, deceptive, and misleading statements to be inserted and to appear in advertising circulars and bulletins distributed by them. The statements contained in said bulletins and circulars are addressed to and are and have been distributed among salesmen or prospective salesmen, and are intended to be and constitute instructions to them in connection with sales talks to be made to housewives, customers, and consumers throughout the various States of the United States. In this manner the said various false and misleading statements and representations inserted in advertising bulletins and circulars by respondents are, and have been, passed on to the ultimate consumer by respondents' salesmen and representatives and the consuming public have been induced to purchase the goods offered for sale and sold by respondents under the erroneous belief that said false and misleading statements and representations were true.

PAR. 3. Respondent Maid-O-Best, Inc., in connection with the sale and distribution in interstate commerce of the aforementioned products, printed in bulletins and circulars and instructions a picture of a person supposed to be one J. M. Gebhardt, wherein the alleged Gebhardt was designated as "Director of Sales, Maid-O-Best, Inc.," and he

invites prospective salesmen to "join Maid-O-Best's national sales organization without risking one penny," when in truth and in fact the said "J. M. Gebhardt" is a fictitious person and the picture printed was instead a picture of G. M. Moses, then president and moving spirit of Maid-O-Best, Inc. Said picture and accompanying statements and announcements were and have been used for the manifest purpose of creating the impression upon prospective agents and representatives who would in turn convey such impression to the consuming public, that Maid-O-Best, has and has had a large selling organization, national in scope and character, when such was and is not the fact.

PAR. 4. In a circular issued by respondent Maid-O-Best, Inc., in furtherance of the sale, in interstate commerce, of Maid-O-Best products, the following statements and representations appeared:

1. Long-established manufacturer makes startling announcement to those who want ready cash; (2) The large manufacturing company back of Maid-O-Best products has made it possible for me to offer you better quality products at much lower resale prices. And of great importance to you is the fact that your margin of profit is a generous one. Every sale repays you handsomely for your efforts; (3) We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities.

Said Maid-O-Best, Inc., further caused to appear in advertising matter distributed in interstate commerce the words:

Manufactured only by Maid-O-Best, Inc.,
St. Paul, Minn., U. S. A.

When in truth and in fact the said Maid-O-Best, Inc., did not and has not owned, operated or controlled any mills, factory or laboratory wherein the products which it sells or sold and distributes or distributed in interstate commerce are and were manufactured or compounded, said products on the contrary, having been manufactured or packed by Morris Averbach, trading as The Muriel Co., Maid-O-Best, Inc., is not a long-established manufacturer, concern or business, has not had any large manufacturing company back of its products, and has not purchased ingredients in tremendous quantities, nor packed the products distributed by it in interstate commerce; said Maid-O-Best, Inc., on the contrary, merely furnishing bottles and labels to Morris Averbach, who prepares and has prepared certain quantities of the products which respondent Maid-O-Best has advertised and sold under the name "Maid-O-Best."

PAR. 5. In the further course and conduct of its business respondent, Maid-O-Best, Inc., caused to appear in periodicals and advertising folders having a wide interstate circulation advertisements containing representations regarding the usual and customary retail

sale price and value of the various products sold by the respondent and regarding certain so-called "free" goods allegedly given in connection with the purchase of various products. Typical of these advertisements is the following:

A $3.70 Value 47¢

1 8 Ounce Bottle Imitation Vanilla Extract, Value	$1.00
1 4 Ounce Bottle Lemon Flavor, Value	.60
1 4 Ounce Bottle Almond Flavor, Value	.60
1 2 Ounce Bottle Orange Flavor, Value	.50
1 2 Ounce Bottle Maple Flavor, Value	.50
1 1 Pound Can Choc-o-Toddy FREE, Value	.50
	3.70

YOU SELL IT COMPLETE FOR 97¢
5 BIG BOTTLES 47¢
SELLS AT SIGHT FOR 97¢
WITH CAN OF CHOCOLATE TODDY
FREE!

Similar representations have been made by all of the other respondents in connection with the sale and distribution of their products in said commerce as aforesaid. In truth and in fact the "regular retail prices" as set forth in such advertisements and advertising matter were and are fictitious and greatly in excess of the prices at which said products ordinarily were and are sold and greatly in excess of the prices at which the respondents intended or contemplated that said products would be sold in the usual course of trade. The articles mentioned in said advertisements as being free are not in truth a gratuity without cost to the donee, the recipient thereof being required to purchase other articles in order to obtain so called free goods, and the price or value of the free goods is included in the sum paid for such other articles.

PAR. 6. Respondent Maid-O-Best, Inc., in its advertising matter and price lists distributed in interstate commerce has used the term "Vanilla Extract" to describe an imitation vanilla flavor, when in truth and in fact such preparation is not a true extract but a cheap flavoring compound, lacking the alcohol content that would be required as a vehicle to carry the genuine flavoring extract.

And said Maid-O-Best, Inc., in its advertising matter further has stated that "we are particular about the quality of such products as Vanilla beans, Vanillin, Coumarin, Glycerin, Lemon, Maple, Orange and other commodities that go into the making of our flavorings," and "You cannot tell how good imitation Vanilla extract is until you try it. Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price.

Maid-O-Best Vanilla Extract is composed of Vanillin, Coumarin, Caramel color and a liberal quantity of pure vanilla made from the choicest vanilla beans," when in truth and in fact said respondent Maid-O-Best, Inc., has not used "liberal quantities" of "pure vanilla" in the preparation of said alleged "extract," nor vanillin made from vanilla beans, and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes, suspended largely in cheap oils or gum emulsions, instead of ethyl alcohol, recognized as the most valuable and desirable vehicle that can be used in dissolving and preserving food flavorings, and said Maid-O-Best, Inc., flavorings in no manner equal or approach the quality and excellence claimed for them in said respondent's advertising matter.

PAR. 7. Said Maid-O-Best, Inc., further in a circular marked "New Big Free Deal * * *," caused the following statements to appear:

Maid-O-Best products are exceptionally fine quality. They are made of purest ingredients—they are guaranteed to you and to your customers—guaranteed that they will give complete satisfaction, otherwise every penny involved in the purchase price of any of the products is cheerfully refunded. This Guarantee is Backed by $3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution for This Purpose. The guarantee is bona-fide, iron clad—it is your protection for those to whom you sell Maid-O Best products.

* * * * * * *

Guaranteed Quality * * * Lower Prices to You * * * Lower Prices for Your Customers. $3,000 Guarantee of Quality. This is Your Assurance of Success With Maid-O-Best.

Maid-O-Best, Inc., has deposited in a leading banking institution $3,000 to back up its iron-clad guarantee of customer-satisfaction or money back. If any question as to quality arises in the minds of your customers don't hesitate to give them the Maid-O-Best Guarantee. Don't hesitate to mention that the Guarantee is backed by money set aside in the bank.

* * * * * * *

Whereas, in truth and in fact, respondent Maid-O-Best, Inc., did not retain in any bank or banking institution in a special account or otherwise, any fund to guarantee Maid-O-Best products and to refund purchase price of the same upon the return of the goods purchased, the said sum of $3,000.00 or any other sum, but on the contrary, said Maid-O-Best, Inc., withdrew said cash deposit shortly after it was made with the Western State Bank of St. Paul, Minn., substituted bonds therefor and then withdrew said bonds. Said representations in connection with said guarantee fund are and were further false and misleading in fact in that the flavoring products manufactuerd by Maid-O-Best, Inc., are not and have not been made from the purest ingredients, and are not and never were pure, strong, and delicious.

PAR. 8. On or about January 15, 1933, the respondent Morris Averbach took over the business of the respondent Maid-O-Best, Inc., and continued the business under the name The Muriel Co., and flavoring and other products have been made by him under the same formulae as used by Maid-O-Best, Inc., and he has continued to use in connection with the advertising, sale and offering for sale of that company's products in interstate commerce, the same cuts and advertising matter, periodical and otherwise, which had been theretofore employed, as herein alleged, by Maid-O-Best, Inc., in connection with the sale of Maid-O-Best products in interstate commerce. Said Morris Averbach, trading as The Muriel Co., further continued using Maid-O-Best as a trade mark on products sold by him and in advertising and offering said products for sale.

In the course and conduct of his business, the respondent Morris Averbach caused statements to be made and circulated in printed advertisements regarding the price and quality of the various products sold, regarding the nature and extent of said business and, regarding the opportunity afforded representatives. Typical of these statements are the following:

Amazing Way to Earn Big Pay
Up to $15 Every Day is Easy * * *
Here's the Best of Its Kind
Here's big money for you every day * * *
sensational food flavoring extract * * * deals.

* * * * * * *

We sell all over the United States in large quantities, therefore our purchasing power is great. Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you.

* * * * * * *

HIGH QUALITY FLAVORING EXTRACTS FRESH FROM OUR FACTORY

We present herewith 4 Great Money-Saving Combination Deals for the purchase of the Maid-O-Best brand of high quality Flavorings and Extracts.

* * * * * * *

Only the purest of ingredients are used. * * *

DEAL NO. 10

1 8 Ounce Bottle Vanilla, Value	$1.00
1 4 Ounce Bottle Lemon, Value	.60
1 4 Ounce Bottle Almond, Value	.60
1 2 Ounce Bottle Orange, Value	.50
1 2 Ounce Bottle Maple, Value	.50
1 Pound Choc-O-Toddy FREE, Value	.50
Total Value	$3.70

5 FLAVORS AND TODDY FOR 97¢

(Three other such "deals" of substantially the same character are also set out.)

In truth and in fact said statements and representations made by the respondent Morris Averbach were and are false, deceptive, and misleading in the following, among other particulars:

1. It is not "easy" nor in fact hardly possible for an agent or representative to "earn up to $15 Every Day" nor any day in selling Muriel Company products.

2. Respondent's food flavors were not and are not "extracts," dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions and oils.

3. The ingredients contained in respondent's flavoring preparations were and are not "high quality" or the "purest and finest".

4. Respondent's business is a relatively small one and does not and cannot buy the various raw materials in "tremendous quantities" and thereby effect "greater savings which are passed on" to housewives of America.

5. The "selling prices" or "values" published in connection with so-called "deals" of flavoring compounds were and are fictitious and greatly in excess of the prices at which such flavoring compounds were and are sold or were ever intended or contemplated to be sold.

6. The said product advertised and designated in advertising matter as "Choc-O-Toddy" and as "manufactured by The Muriel Company" is not and never has been manufactured by The Muriel Company.

PAR. 9. In the course and conduct of its business, the respondent Averbach Company, Inc., in connection with the interstate distribution of said products has caused various statements regarding "free goods," "special" offers and deals to be printed and circulated. Among and typical of such statements are the following:

JACK FOSTER'S FAMOUS

4 BOTTLE DEAL

PLUS A FINE QUALITY

BIB APRON FREE!

VALUABLE HOSIERY

GIFT COUPON

FREE!

THIS APRON FREE!

$1 brings you complete sales equipment, including free apron and hosiery sample, postage paid

WHEN THEY SEE THIS AMAZING FREE OFFER!

Bungalow Bib Apron Free. 2 pair form-fashioned ladies hose for only 49¢. Ask representative for free coupon

SPECIAL DEAL NO. 1 AND NO. 2

Bungalow Bib Apron FREE with Deal

PLUS

2 Pair Hosiery Coupon

FREE!

FREE GOODS

To help defray freight cost, we will give you one dozen deals Free with each purchase of twelve dozen, or when your combined order totals twelve dozen. Order must be confined to one deal to get Free Goods

In connection with said "free" goods and "special" offer and deal representations, the representation is made, in many instances, that the time within which the "free" goods or "special" offers and deals may be secured is limited or that the number of persons who may secure the same is limited.

In the further course of its dealings, respondent Averbach Company, Inc., has distributed among agents or purchasers in various States a combination deal entitled "American Brand of Guaranteed Flavors—All For Only 99¢." Said deal presented as a "Special Advertising Offer" offers respectively:

One 8-ounce Imitation Vanilla Flavor
One 8-ounce Lemon Flavor
One 4-ounce Orange Flavor
One 4-ounce Almond Flavor
Plus
Bungalow Bib Apron FREE

Said 8-ounce bottle of Imitation Vanilla Flavor contains a statement on its label that said Flavor is "composed of vanillin, coumarin, vanilla, and caramel"; said 8-ounce bottle of lemon flavor is labeled "Terpeneless Lemon Flavor," and the said 4-ounce bottle of orange flavor is labeled "Terpeneless Orange Flavor," thereby indicating that they are made from the essential oils instead of synthetic chemical flavors. In truth and in fact said statements and representations

made by respondent Averbach Co., Inc., are false, misleading and deceptive in the following, among other particulars:

1. Genuine vanillin made from vanilla beans has not been employed in the preparation of respondent's said vanilla flavoring. Respondent's flavoring compounds designated as "lemon," "orange," and "almond" are not manufactured from the essential oils, as their labels indicate, but instead are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equal or approach the quality and excellence claimed for them in respondent's advertising matter.

2. Various articles advertised and represented by respondent as being given away "Free" are not, in fact, given away "Free," a person being required to purchase a deal in order to obtain a bib apron or a gift coupon, and the price or value of the alleged gift is included in the sum obtained in each instance for the particular deal.

3. The offer of two pairs of hose for 49 cents is not limited in time or a special offer, nor are the other so-called "special deals" and "special offers" special in the sense that such deals and offers are limited to a given period of time or to a given number of persons for they are not limited as to time or the number of persons who may secure them, and respondent's selling plans do not help a purchaser to defray freight costs.

PAR. 10. In addition to the respondents expressly named in connection with the acts and practices enumerated in paragraphs 3 to 9 hereof inclusive, all of the other parties respondent have used the acts, practices and methods alleged in paragraphs 3 to 9 hereof inclusive. Said respondents, by their acts, practices, and methods as hereinabove alleged, have falsely represented to respective agents and to the consuming public that certain of their products were worth and were ordinarily sold for the retail prices stated, when in truth and in fact said products are not sold, and said respondents did not contemplate or intend that they would be sold, at the prices stated, and they have falsely represented the character, contents, value and quality of said products, and they have made false and misleading statements and misrepresentations to the effect that certain goods or articles of merchandise are being, and would be given away "free," when such was not and is not the fact. They have made false and misleading statements and misrepresentations concerning the above described guaranty fund of $3,000.

PAR. 11. By the use of the aforesaid false and misleading representations appearing in respondents' circulars and other advertising matter, which representations are passed on to the purchasing public

by agents and representatives of respondents, the public are and have been thereby deceived concerning the character, quality, and value of respondents' products, and have thereby been induced to purchase such products under the erroneous belief that the same are and were of high grade and quality, containing only ingredients of the purity and excellence claimed for them, and of the value claimed for them in said fictitious prices quoted thereon.

The aforesaid practices are further to the detriment and injury of sellers of products similar to those sold by respondents, and have and have had the capacity and tendency to divert to respondents the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondents. Thereby, substantial injury is done and has been done by the respondents to competition in interstate commerce, and there is and has been placed in the hands of respondents' dealers, agents and distributors instruments by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 12. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and 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 March 1, 1938, issued, and on March 3, 1938, served, its complaint in this proceeding upon respondents, Averbach Co., Inc., a corporation; Maid-O-Best, Inc., a corporation; G. M. Moses, an individual; and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co., and American Chemical Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer by the respondents Averbach Co., Inc., a corporation; Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., the Commission, by order entered herein, granted said respondents' motion for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to

said facts, which substitute answer was duly filed in the office of the Commission. Subsequently, the respondents Maid-O-Best, Inc., a corporation, and G. M. Moses, an individual, filed their separate answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer 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 Maid-O-Best, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business having been located at 695 Selby Avenue, St. Paul, Minn. Respondent Maid-O-Best, Inc., from August 29, 1932, until March 1, 1933, was engaged in the sale and distribution in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. Respondent G. M. Moses, during the period next above stated, was the president of Maid-O-Best, Inc., and directed the activities and controlled the business affairs and policies of said respondent corporation. About January 1, 1933, G. M. Moses resigned as president of Maid-O-Best, Inc., being succeeded in such office by one Esther Averbach, one Marie Ryan becoming vice president of said corporation.

Respondent Morris Averbach, in the year 1932, trading under the name of The Muriel Co. at St. Paul, Minn., likewise became engaged in the manufacture and in the selling and the offering for sale in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. About July 1, 1935, respondent Morris Averbach, in connection with the sale of the herein mentioned products, began to trade under the name American Chemical Co. Thereafter, in July 1936, the manufacturing businesses which had theretofore been conducted by G. M. Moses through Maid-O-Best, Inc., and by Morris Averbach employing the trade name companies, The Muriel Co. and the American Chemical Co., were taken over by a corporation organized and financed by the said respondent Morris Averbach and members of his family under the corporate name and designation of Averbach Co., Inc. The officers of the said corporation are: Jerome Averbach, son of respondent Morris Averbach, president; Pearl Berkus, a relative of respondent Morris Averbach, vice president; and respondent Morris Averbach, secretary-treasurer. The present address under which the

Averbach Company, Inc., is now operating through its own corporate name and the trade names, The Muriel Company, the American Chemical Co., and Maid-O-Best, Inc., is 1449 University Avenue, St. Paul, Minn.

The said Morris Averbach, is, and for several years last past has been, the moving and dominant spirit successively in connection with the conduct, affairs and operations of The Muriel Co., Maid-O-Best, Inc., the American Chemical Co., and Averbach Co., Inc. Throughout the successive years in which the said Morris Averbach has been in the business of manufacturing flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds, the said respondent has dominated said companies and controlled their respective policies and activities.

In the course and conduct of their respective businesses, respondents Maid-O-Best, Inc., G. M. Moses, Morris Averbach, Jerome Averbach, Esther Averbach, and Averbach Co., Inc., have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in selling and offering for sale in interstate commerce flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds.

PAR. 2. In the course and conduct of their respective businesses as described in paragraph 1 hereof, the said named respondents have offered their products for sale and have sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers, through the medium of travelling salesmen, agents, and solicitors. Said goods are and were shipped in response to orders taken by such travelling salesmen, agents and solicitors and transported or caused to be transported in commerce among the several States of the United States.

In the course and conduct of their said businesses, as hereinafter related, respondents have caused various false, deceptive, and misleading statements to be inserted and to appear in advertising circulars and bulletins distributed by them. The statements contained in said bulletins and circulars are addressed to and are and have been distributed among salesmen or prospective salesmen, and are intended to be and constitute instructions to them in connection with sales talks to be made to housewives, customers, and consumers throughout the various States of the United States. In this manner the said various false and misleading statements and representations inserted in advertising bulletins and circulars by respondents are, and have been, passed on to the ultimate consumer by respondents' salesmen and representatives and the consuming public have been induced to purchase the goods offered for sale and sold by respondents under the erroneous belief

that said false and misleading statements and representations were true.

PAR. 3. Respondent Maid-O-Best, Inc., in connection with the sale and distribution in interstate commerce of the aforementioned products, printed in bulletins and circulars and instructions a picture of a person supposed to be one J. M. Gebhardt, wherein the alleged Gebhardt was designated as "Director of Sales, Maid-O-Best, Inc.," and he invites prospective salesmen to "join Maid-O-Best's national sales organization without risking one penny," when in truth and in fact the said "J. M. Gebhardt" is a fictitious person and the picture printed was instead a picture of G. M. Moses, then president and moving spirit of Maid-O-Best, Inc. Said picture and accompanying statements and announcements were and have been used for the manifest purpose of creating the impression upon prospective agents and representatives who would in turn convey such impression to the consuming public, that Maid-O-Best, has and has had a large selling organization, national in scope and character, when such was and is not the fact.

PAR. 4. In a circular issued by respondent Maid-O-Best, Inc., in furtherance of the sale, in interstate commerce, of Maid-O-Best products, the following statements and representations appeared:

1. Long-established manufacturer makes startling announcement to those who want ready cash; (2) The large manufacturing company back of Maid-O-Best products has made it possible for me to offer you better quality products at much lower resale prices. And of great importance to you is the fact that your margin of profit is a generous one. Every sale repays you handsomely for your efforts; (3) We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities.

Said Maid-O-Best, Inc., further caused to appear in advertising matter distributed in interstate commerce the words:

Manufactured only by Maid-O-Best, Inc., St. Paul, Minn., U. S. A.

When in truth and in fact the said Maid-O-Best, Inc., did not and has not owned, operated or controlled any mills, factory, or laboratory wherein the products which it sells or sold and distributes or distributed in interstate commerce are and were manufactured or compounded, said products on the contrary, having been manufactured or packed by Morris Averbach, trading as The Muriel Co. Maid-O-Best, Inc., is not a long-established manufacturer, concern or business, has not had any large manufacturing company back of its products, and has not purchased ingredients in tremendous quantities, nor packed the products distributed by it in interstate commerce; said Maid-O-Best, Inc., on the contrary, merely furnishing bottles and labels to Morris Averbach, who prepares and has prepared certain

quantities of the products which respondent Maid-O-Best has advertised and sold under the name "Maid-O-Best."

PAR. 5. In the further course and conduct of its business respondent, Maid-O-Best, Inc., caused to appear in periodicals and advertising folders having a wide interstate circulation advertisements containing representations regarding the usual and customary retail sale price and value of the various products sold by the respondent and regarding certain so-called "free" goods allegedly given in connection with the purchase of various products. Typical of these advertisements is the following:

A $3.70 Value 47¢

1 8 Ounce Bottle Imitation Vanilla Extract, Value	$1.00
1 4 Ounce Bottle Lemon Flavor, Value	.60
1 4 Ounce Bottle Almond Flavor, Value	.60
1 2 Ounce Bottle Orange Flavor, Value	.50
1 2 Ounce Bottle Maple Flavor, Value	.50
1 1 Pound Can Choc-o-Toddy FREE, Value	.50
	$3.70

YOU SELL IT COMPLETE FOR 97¢

5 BIG BOTTLES 47¢

SELLS AT SIGHT FOR 97¢

WITH CAN OF CHOCOLATE TODDY

FREE!

Similar representations have been made by all of the other respondents in connection with the sale and distribution of their products in said commerce as aforesaid. In truth and in fact the "regular retail prices" as set forth in such advertisements and advertising matter were and are fictitious and greatly in excess of the prices at which said products ordinarily were and are sold and greatly in excess of the prices at which the respondents intended or contemplated that said products would be sold in the usual course of trade. The articles mentioned in said advertisements as being free are not in truth a gratuity without cost to the donee, the recipient thereof being required to purchase other articles in order to obtain so-called free goods, and the price or value of the free goods is included in the sum paid for such other articles.

PAR. 6. Respondent Maid-O-Best, Inc., in its advertising matter and price lists distributed in interstate commerce has used the term "Vanilla Extract" to describe an imitation vanilla flavor, when in truth and in fact such preparation is not a true extract but a cheap flavoring compound, lacking the alcohol content that would be required as a vehicle to carry the genuine flavoring extract.

And said Maid-O-Best, Inc., in its advertising matter further has stated that "we are particular about the quality of such products as vanilla beans, vanillin, coumarin, glycerin, lemon, maple, orange, and other commodities that go into the making of our flavorings," and "You cannot tell how good imitation Vanilla extract is until you try it. Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price. Maid-O-Best Vanilla Extract is composed of vanillin, coumarin, caramel color and a liberal quantity of pure vanilla made from the choicest vanilla beans," when in truth and in fact said respondent Maid-O-Best, Inc., has not used "liberal quantities" of "pure vanilla" in the preparation of said alleged "extract," nor vanillin made from vanilla beans, and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" are composed largely of cheap inferior ingredients, including synthetic chemical substitutes, suspended largely in cheap oils or gum emulsions, instead of ethyl alcohol, recognized as the most valuable and desirable vehicle that can be used in dissolving and preserving food flavorings, and said Maid-O-Best, Inc., flavorings in no manner equal or approach the quality and excellence claimed for tnem in said respondent's advertising matter.

PAR. 7. Said Maid-O-Best, Inc., further in a circular marked "New Big Free Deal· * * *," caused the following statements to appear:

Maid-O-Best products are exceptionally fine quality. They are made of purest ingredients—they are guaranteed to you and to your customers—guaranteed that they will give complete satisfaction, otherwise every penny involved in the purchase price of any of the products is cheerfully refunded. This Guarantee Is Backed by $3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution for This Purpose. The guarantee is bona-fide, iron clad—it is your protection for those to whom you sell Maid-O-Best products.

* * * * * * *

Guaranteed Quality * * * Lower Prices to You * * * Lower Prices For Your Customers. $3,000 Guarantee of Quality. This is Your Assurance of Success With Maid-O-Best.

Maid-O-Best, Inc., has deposited in a leading banking institution $3,000 to back up its iron-clad guarantee of customer-satisfaction or money back. If any question as to quality arises in the minds of your customers don't hesitate to give them the Maid-O-Best Guarantee. Don't hesitate to mention that the Guarantee is backed by money set aside in the bank.

* * * * * * *

Whereas, in truth and in fact, respondent Maid-O-Best, Inc., did not retain in any bank or banking institution in a special account or otherwise, any fund to guarantee Maid-O-Best products and to refund purchase price of the same upon the return of the goods purchased, the

said sum of $3,000 or any other sum, but on the contrary, said Maid-O-Best, Inc., withdrew said cash deposit shortly after it was made with the Western State Bank of St. Paul, Minn., substituted bonds therefor and then withdrew said bonds. Said representations in connection with said guarantee fund are and were further false and misleading in fact in that the flavoring products manufactured by Maid-O-Best, Inc., are not and have not been made from the purest ingredients, and are not and never were pure, strong, and delicious.

PAR. 8. On or about January 15, 1933, the respondent Morris Averbach, took over the business of the respondent, Maid-O-Best, Inc., and continued the business under the name The Muriel Co., and flavoring and other products have been made by him under the same formulae as used by Maid-O-Best, Inc., and he has continued to use in connection with the advertising, sale, and offering for sale of that company's products in interstate commerce, the same cuts and advertising matter, periodical and otherwise, which had been theretofore employed, as herein alleged, by Maid-O-Best, Inc., in connection with the sale of Maid-O-Best products in interstate commerce. Said Morris Averbach, trading as The Muriel Co., further continued using "Maid-O-Best" as a trade mark on products sold by him and in advertising and offering said products for sale.

In the course and conduct of his business, the respondent Morris Averbach caused statements to be made and circulated in printed advertisements regarding the price and quality of the various products sold, regarding the nature and extent of said business and, regarding the opportunity afforded representatives. Typical of these statements are the following:

Amazing Way to Earn Big Pay
Up to $15 Every Day is Easy * * *
Here's the Best of Its Kind
Here's big money for you every day * * *
sensational food flavoring extract * * * deals.

* * * * * * *

We sell all over the United States in large quantities, therefore our purchasing power is great. Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you.

* * * * * * *

HIGH QUALITY FLAVORING EXTRACTS FRESH FROM OUR FACTORY

We present herewith 4 Great Money-Saving Combination Deals for the purchase of the Maid-O-Best brand of high quality Flavorings and Extracts.

* * * * * * *

Only the purest of ingredients are used. * * *

DEAL NO. 10

1 8 Ounce Bottle Vanilla, Value	$1.00
1 4 Ounce Bottle Lemon, Value	.60
1 4 Ounce Bottle Almond, Value	.60
1 2 Ounce Bottle Orange, Value	.50
1 2 Ounce Bottle Maple, Value	.50
1 Pound Choc-O-Toddy FREE, Value	.50
Total Value	$3.70

5 FLAVORS AND TODDY FOR 97¢

(Three other such "deals" of substantially the same character are also set out.)

In truth and in fact said statements and representations made by the respondent Morris Averbach were and are false, deceptive and misleading in the following, among other particulars:

1. It is not "easy" nor in fact hardly possible for an agent or representative to "earn up to $15 Every Day" nor any day in selling Muriel Company products.

2. Respondent's food flavors were not and are not "extracts," dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions and oils.

3. The ingredients contained in respondent's flavoring preparations were and are not "high quality" or the "purest and finest".

4. Respondent's business is a relatively small one and does not and cannot buy the various raw materials in "tremendous quantities" and thereby effect "greater savings which are passed on" to housewives of America.

5. The "selling prices" or "values" published in connection with so-called "deals" of flavoring compounds were and are fictitious and greatly in excess of the prices at which such flavoring compounds were and are sold or were ever intended or contemplated to be sold.

6. The said product advertised and designated in advertising matter as "Choc-O-Toddy" and as "manufactured by The Muriel Co." is not and never has been manufactured by The Muriel Co.

PAR. 9. In the course and conduct of its business, the respondent Averbach Co., Inc., in connection with the interstate distribution of said products has caused various statements regarding "free goods", "special" offers and deals to be printed and circulated. Among and typical of such statements are the following:

JACK FOSTER'S FAMOUS
4 BOTTLE DEAL
PLUS A FINE QUALITY
BIB APRON FREE!
VALUABLE HOSIERY
GIFT COUPON
FREE!
THIS APRON FREE!

$1 brings you complete sales equipment, including free apron and hosiery sample, postage paid

WHEN THEY SEE THIS AMAZING FREE OFFER!

Bungalow Bib Apron Free. 2 pair form-fashioned ladies hose for only 49¢.
Ask representative for free coupon

SPECIAL DEAL NO. 1 and NO. 2
Bungalow Bib Apron FREE with Deal
PLUS
2 pair Hosiery Coupon
FREE!

FREE GOODS

To help defray freight cost, we will give you one dozen deals FREE with each purchase of twelve dozen, or when your combined order totals twelve dozen. Order must be confined to one deal to get Free Goods

In connection with said "free" goods and "special" offer and deal representations, the representation is made, in many instances, that the time within which the "free" goods or "special" offers and deals may be secured is limited or that the number of persons who may secure the same is limited.

In the further course of its dealings, respondent Averbach Company, Inc., has distributed among agents or purchasers in various States a combination deal entitled "American Brand of Guaranteed Flavors—All For Only 99¢." Said deal presented as a "Special Advertising Offer" offers respectively:

One 8-ounce Imitation Vanilla Flavor
One 8-ounce Lemon Flavor
One 4-ounce Orange Flavor
One 4-ounce Almond Flavor
Plus
Bungalow Bib Apron FREE

Said 8-ounce bottle of Imitation Vanilla Flavor contains a statement on its label that said Flavor is "composed of vanillin, coumarin, vanilla, and caramel"; said 8-ounce bottle of lemon flavor is labeled "Terpeneless Lemon Flavor," and the said 4-ounce bottle of orange flavor is labeled "Terpeneless Orange Flavor," thereby indicating that they are made from the essential oils instead of synthetic chemical flavors. In truth and in fact said statements and representations made by respondent Averbach Co., Inc., are false, misleading, and deceptive in the following, among other particulars:

1. Genuine vanillin made from vanilla beans has not been employed in the preparation of respondent's said vanilla flavoring. Respondent's flavoring compounds designated as "lemon," "orange," and "almond" are not manufactured from the essential oils, as their labels indicate, but instead are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equal or approach the quality and excellence claimed for them in respondent's advertising matter.

2. Various articles advertised and represented by respondent as being given away "Free" are not, in fact, given away "Free," a person being required to purchase a deal in order to obtain a bib apron or a gift coupon, and the price or value of the alleged gift is included in the sum obtained in each instance for the particular deal.

3. The offer of two pairs of hose for 49 cents is not limited in time or a special offer, nor are the other so-called "special deals" and "special offers" special in the sense that such deals and offers are limited to a given period of time or to a given number of persons for they are not limited as to time or the number of persons who may secure them, and respondent's selling plans do not help a purchaser to defray freight costs.

PAR. 10. In addition to the respondents expressly named in connection with the acts and practices enumerated in paragraphs 3 to 9 hereof inclusive, all of the other parties respondent have used the acts, practices and methods alleged in paragraphs 3 to 9 hereof inclusive. Said respondents, by their acts, practices, and methods as hereinabove alleged, have falsely represented to respective agents and to the consuming public that certain of their products were worth and were ordinarily sold for the retail prices stated, when in truth and in fact said products are not sold, and said respondents did not contemplate or intend that they would be sold, at the prices stated, and they have falsely represented the character, contents, value, and quality of said products, and they have made false and misleading statements and misrepresentations to the effect that certain goods or articles of merchandise are being, and would be given away "free," when such was not and is not the fact. They have made false and misleading statements and misrepresentations concerning the above described guaranty fund of $3,000.

PAR. 11. By the use of the aforesaid false and misleading representations appearing in respondents' circulars and other advertising matter, which representations are passed on to the purchasing public by agents and representatives of respondents, the public are and have been thereby deceived concerning the character, quality, and value of respondents' products, and have thereby been induced to purchase such

products under the erroneous belief that the same are and were of high grade and quality, containing only ingredients of the purity and excellence claimed for them, and of the value claimed for them in said fictitious prices quoted thereon.

The aforesaid practices are further to the detriment and injury of sellers of products similar to those sold by respondents, and have had the capacity and tendency to divert to respondents the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondents. Thereby, substantial injury is done and has been done by the respondents to competition in interstate commerce, and there is and has been placed in the hands of respondents' dealers, agents, and distributors instruments by means of which they mislead and deceive and have misled and deceived the purchasing public.

CONCLUSION

The aforesaid acts and practices of the respondents have been and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, Averbach Co., Inc., a corporation and Maid-O-Best, Inc., a corporation, their officers, agents, servants, and employees, G. M. Moses, individually, and his agents, servants, and employees, and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., and their agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of flavoring compounds, foodstuffs, toilet articles, and novelties in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by photographs or in any other way that J. M. Gebhardt, a fictitious person, or any other fictitious person, is a Director of Sales of Maid-O-Best, Inc.

2. Representing that Maid-O-Best, Inc., has a national sales organization until and unless said Maid-O-Best, Inc., actually has and maintains a selling organization through and by which sales are made by said Maid-O-Best, Inc., generally throughout the United States.

3. Representing, through the use of the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minn. U. S. A.," or through the use of any words or terms of similar import and meaning, or through any other means or device or in any manner, that said respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

4. Representing as the customary or regular prices or values for respondents' products prices and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

5. Representing through fictitious prices marked or stamped on or affixed to food flavoring or other products, sold in combination deals or otherwise, 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.

6. Using the term "vanilla extract" to describe a flavoring product, unless prepared with a vehicle of ethyl alcohol and containing a flavoring content at least 50 percent of which shall consist of true vanilla made from the vanilla bean.

7. Representing that respondents' so-called vanilla extract has no equal for quality, or that it is the finest available at any price, or that it is composed of vanillin, coumarin, caramel color, and a liberal quantity of pure vanilla made from the choicest vanilla beans, unless and until a liberal quantity of pure vanilla, made from vanilla beans, is actually used in the preparation of said alleged extract, the whole suspended or carried in a vehicle of ethyl alcohol.

8. Using the words "orange," "lemon," "maple," and "almond" in combination or connection with the word "extract" until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol.

9. Representing that a special account of $3,000 or any other amount represented to be used to cover refunds for returned Maid-O-Best products is deposited in the Western State Bank of St. Paul,

Minn., or in any other financial institution, until and unless said sum be actually deposited and maintained on deposit in such bank or other financial institution and there kept available in liquid form for the said purpose.

10. Representing that it is easy for agents or representatives to earn up to $15 or any other sum of money per day in selling respondents' products, unless and until the sum named is a true representation of the average net earnings or profits consistently made by respondents' agents or representatives in the ordinary course of business under normal conditions and circumstances.

11. Designating any so-called food flavors as extracts until and unless they are genuine extracts dissolved and carried in alcoholic solution.

12. Representing that cheap, inferior ingredients contained in flavoring preparations are of "high quality" or "purest and finest."

13. Representing that respondents buy their raw materials in "tremendous quantities," and from representing that greater savings are thereby passed on to the housewives of America, until and unless said statements are true in fact.

14. Representing that the product "Choc-O-Toddy" or any other product is manufactured by the respondents unless and until such respondents actually own or operate, or directly and absolutely control, a manufacturing plant wherein said product is manufactured by them.

15. Representing, designating, or describing articles of merchandise regularly included in a combination offer with other identical, similar, or other articles of merchandise as "free," "included free," or any other term of similar import or meaning.

16. Using the word "free" to describe or refer to goods, wares, or merchandise forming a part of any combination offer unless all of the terms and conditions of such offer are clearly and unequivocally stated in immediate connection or conjunction with the word "free" in words, letters, or figures of equal conspicuousness and there is no deception as to the price, quality, character, or any other feature of any items in the offer.

17. Representing that so-called "special offers" or "special deals" are limited to a given period of time or to a given number of persons, if in truth and in fact the prices stated in such offers and deals are the regular, usual, and customary prices at which the products therein mentioned are offered for sale.

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

LELAND F. BENHAM, TRADING AS THE ZELLE COMPANY

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

Docket 3854. Complaint, July 17, 1939—Decision, Sept. 11, 1939

Where an individual engaged in sale and distribution of two medical preparations for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," to purchasers in various other States and in the District of Columbia; in advertisements which he disseminated through the mails, through insertions in newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of his said preparations—

(a) Represented that his said medicinal products, designated as "Zellets No. 1" and "Zellets No. 2," were a competent and effective remedy for delayed menstruation, and were harmless, and would accomplish results without pain or inconvenience, facts being they were not such a competent and effective remedy for said condition, and would not accomplish results as aforesaid claimed, and were not safe and harmless in that said "Zellets No. 1" contained aloes and oil of savin, and said "Zellets No. 2" contained aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin, and aforesaid drugs were present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual; and

(b) Failed to reveal, in advertisements disseminated as above, that use of said preparation, under conditions prescribed therein or under conditions such as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and to induce, because of such belief, purchase of his said injurious, drug-containing, medicinal products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.
Mr. Edward T. Morris, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leland F. Benham, an individual, trading as The Zelle Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

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

PARAGRAPH 1. Respondent Leland F. Benham is an individual trading and doing business as The Zelle Co., with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of two medical preparations for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal 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 aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers, and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce as "commerce" is defined in the Fereral Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Now

Delay is not necessary

Women may now find welcome relief from month to month uncertainty. When delayed you may have faith in our truly amazing Zellets Compound.

Marvelous, satisfying relief generally comes quickly. Absolutely harmless—easy to take. Desired results usually very prompt, without pain or inconvenience

For really obstinate cases try Zellets No. 2.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "Zellets No. 1" and "Zellets No. 2" are a competent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that said preparation known as "Zellets No. 1" contains aloes and oil of savin and said preparation known as "Zellets No. 2" contains aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin. The aforesaid drugs are present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under conditions

as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, 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 and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 17, 1939, issued, and on July 24, 1939, served, its complaint in this proceeding upon the respondent, Leland F. Benham, an individual, trading as The Zelle Co., charging him with the use of unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 Leland F. Benham is an individual trading and doing business as The Zelle Co. with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of two medical preparations for the relief

of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal 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 aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparation by the United States mails, by insertions in newspapers, and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Now

Delay is not necessary

Women may now find welcome relief from month to month uncertainty. When delayed you may have faith in our truly amazing Zellets Compound. Marvelous, satisfying relief generally comes quickly. Absolutely harmless—easy to take. Desired results usually very prompt, without pain or inconvenience.

For really obstinate cases try Zellets No. 2

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "Zellets No. 1" and "Zellets No. 2" are a compe-

tent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that said preparation known as "Zellets No. 1" contains aloes and oil of savin and said preparation known as "Zellets No. 2" contains aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin. The aforesaid drugs are present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, 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 and mistaken

belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Leland F. Benham, an individual, trading as The Zelle Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of United States mails or in commerce as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations known or designated by the name of "Zellets No. 1" and "Zellets No. 2," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act of said medicinal preparations, which advertisements represent directly or through implication that either or both of said preparations constitute a safe, competent and scientific treatment for delayed menstruation and that their use will have no ill effect upon the human body, or which

advertisements fail to reveal that the use of these preparations may result in serious or irreparable injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after the service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order, and if so, the manner and form in which he intends to comply; and that within 60 days after the service upon him of this order said respondent shall 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

STERLING PRODUCTS CORPORATION, AND STERLING PRODUCTS CORPORATION TRADING AS PAUL HARTMANN AGENCY

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

Docket 2779. Complaint, Apr. 23, 1936—Decision, Sept. 12, 1939

Where a corporation engaged in sale by mail order of drugs, pharmaceuticals, surgical instruments, dressings, and surgical supplies, to purchasers thereof in other States; in advertising matter consisting of catalogs, folders, circulars, circular letters, post cards, and other forms of printed advertising mailed from New York City to some 16,000 customers and prospective customers in various other States—

(*a*) Represented that ethyl chloride tubes, ethyl chloride, distilled water, and glass ampules used to hold distilled water, were being sold by competitors as wholly of domestic origin, although they had been made in and imported from a foreign country by competitors involved, notwithstanding fact number of competitors did in fact sell and offer for sale said various products made in United States and entirely of domestic origin, with capacity and tendency to mislead and deceive customers and prospective customers of such competitors and induce them to withhold contemplated orders for articles in question from said competitors and give such orders to it;

(*b*) Represented that it was closing out its stock of foreign-made surgical instruments, and that in future it would deal only in such instruments made in the United States, notwithstanding fact it was then purchasing, and continued to purchase, for resale surgical instruments made in foreign country, and to accept and fill any orders that came to it for such instruments thus made, with capacity and tendency to deceive members of public into purchasing such instruments from it in the erroneous and mistaken belief that when it had thus closed out its foreign-made stock it would sell only such instruments made in the United States, as preferred by substantial portion of purchasing public in case of such products and medical supplies, etc.; and

(*c*) Represented that all of the surgical and medical products listed in its said circulars were made in the United States, notwithstanding fact certain dressing so listed was not there made, but was made in foreign country and imported, with capacity and tendency to cause members of purchasing public to buy said merchandise in erroneous and mistaken belief that it was made in the United States, preferred as aforesaid by substantial part thereof;

With direct result that trade in commerce among the various States, by reason of said false and misleading statements and representations, was unfairly diverted to it from its competitors who deal only in surgical instruments of American manufacture and who do not falsely represent the place of manufacture of their respective merchandise or of the merchandise of their competitors:

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

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

Mr. A. W. DeBirny and *Mr. R. P. Bellinger* 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 Sterling Products Corporation, trading under its own name and as Paul Hartmann Agency, 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, Sterling Products Corporation, is a corporation chartered and existing under and by virtue of the laws of the State of New York, and maintains its principal office and place of business at 118–120 East Twenty-fifth Street in the city of New York, within the State of New York. Said respondent is now and for a number of years last past has been engaged in the wholesale and retail sale of drugs and surgical instruments and supplies and the distribution thereof between and among the various States of the United States, both under its own name and under the name of Paul Hartmann Agency. Respondent causes said drugs and surgical instruments and supplies, when sold by it, to be transported to the purchasers thereof located in the State of New York and in the various other States of the United States. There is now and has been for a long time, to wit, for more than 2 years last past, a constant current of trade and commerce by respondent in drugs and surgical instruments and supplies between and among the various States of the United States. Said respondent in its retail business has operated and now does operate under its corporate name, and in its wholesale business has operated and now does operate under the name of Paul Hartmann Agency.

In the course and conduct of its said business respondent is now and for a long time, to wit, 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 other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of drugs and surgical instruments and supplies.

PAR. 2. Among the drugs and surgical instruments and supplies sold and distributed by respondent in interstate commerce are ethyl chloride tubes, ethyl chloride, distilled water, and glass ampules used to hold distilled water. The ethyl chloride tubes and the ethyl chloride sold or offered for sale and distributed by said respondent are of German manufacture and are imported from Germany. Most of the surgical instruments sold or offered for sale and distributed by the said respondent are of German manufacture and are imported by said respondent from Germany.

PAR. 3. Since the adoption by the German Government of its present policies with regard to people of Jewish origin or faith and residing within its borders, there has arisen in the United States, and particularly among Jewish citizens and residents of the United States, a marked antipathy and aversion toward and refusal to purchase any article of German manufacture or origin. The antipathy and aversion to German-made goods so aroused in the Jewish race in the United States is especially noticeable among the professional classes and amounts almost to a boycott so that importation of German-made goods has shown a marked tendency to decrease.

PAR. 4. Said respondent in the regular course and conduct of its said business, which it conducts to a large extent by mail, has caused and is causing to be mailed to its customers and to its prospective customers located in the various States of the United States, catalogs, circulars, folders, letters, and cards, which various catalogs, circulars, folders, letters, and cards have described and do now describe the items sold and offered for sale by said respondent, and said catalogs, circulars, folders, letters, and cards have been used and are now being used by said respondent as a means of and for the purpose of furthering and aiding in the interstate sale and distribution of the items sold or offered for sale by said respondent.

Said respondent in its catalogs, circulars, folders, letters, and cards used by it as a means of furthering its sales, has caused to be made and is now causing to be made various false, deceptive, disparaging, and misleading statements concerning articles sold or offered for sale by its competitors and concerning various articles sold or offered for sale by said respondent. Among said statements which said respondent has made and is now causing to be made in its said catalogs, circulars, folders, letters, and cards, are statements to the effect that ethyl chloride tubes, ethyl chloride, distilled water, and glass ampules sold or offered for sale by its competitors are either "German made" goods or are not "a 100% American product" and originate, in whole or in part in Germany. Whereas, in truth and in fact, the ethyl chloride tubes, ethyl chloride distilled water, and glass ampules sold

or offered for sale by many of respondent's competitors were or are not made in Germany, are a 100 percent American product, and bear on them the statement "Entirely a product of United States," which said statement is true in fact.

Said respondent has caused and is causing to be sold or offered for sale many and various surgical instruments, which said surgical instruments were made in Germany and imported by said respondent. Nevertheless said respondent in the course and conduct of its said business has, in its catalogs, circulars, folders, letters, and cards, caused, and is causing to be made statements to the effect that it is holding a "clearance" sale of German-made products and "New deal after January 1st. Strictly American supreme quality goods in our new listing," and that it had stopped and was stopping the importation of German goods; whereas such statements were and are false, deceptive, and misleading, because in truth and in fact said respondent did not have a "clearance" sale of its German-made products and did not sell or offer for sale and is not now selling or offering for sale strictly American-made goods, and did not and has not ceased the importation of German-made goods, but has restocked and sold or offered for sale in increasing quantities German-made products.

Said respondent in its catalogs, circulars, folders, letters, and cards, has made and is now causing to be made false, deceptive, and misleading statements to the effect that customers purchasing goods in certain stated amounts will be given free goods varying in amount according to the size of the purchase; whereas in truth and in fact said statements are false because the customer is not given free goods, the cost of said goods so given to the customer being borne out of the profits of the goods sold to the customer.

Respondent in its said catalogs, circulars, folders, letters, and cards has created and is creating upon the public, and especially that portion of the public buying surgical instruments and drugs, the impression that by dealing with competitors of said respondent they are purchasing goods made in whole or in part in Germany; whereas in truth and in fact many of said respondent's competitors sell or offer for sale strictly American-made products. Said respondent in its said catalogs, circulars, folders, letters, and cards, has created and is creating upon the public, and especially that portion of the public purchasing drugs and surgical instruments, the impression that by purchasing from respondent they are obtaining strictly American-made products, and that whenever they purchase a stated amount of goods they are receiving free goods; whereas in truth and in fact said goods purchased from said respondent are not strictly American-made goods, but are for the most part products manufactured in Germany, and the

supposedly free goods which purchasers receive are not free but the cost of said free goods is borne out of the profits on the goods sold to the said recipient of the so-called free goods.

PAR. 5. The use by the said respondent, Sterling Products Corporation, and Sterling Products Corporation trading as Paul Hartmann Agency, of the foregoing false, deceptive, disparaging, and misleading representations alleged to be used by the said respondent in paragraph 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 when they purchase from competitors of said respondent they are in truth and in fact purchasing German-made goods and that when they purchase from said respondent they are in truth and in fact purchasing strictly American-made goods and are receiving along with the goods purchased by them, free goods, and has thereby induced and does now induce the consuming public, and especially the purchasers of drugs and surgical instruments and supplies, acting in said erroneous belief, to purchase their drugs, surgical instruments, and supplies from respondent instead of drugs, surgical instruments, and supplies sold or offered for sale by other corporations, partnerships, firms, and individuals. As a result of such false, deceptive, disparaging, and misleading representations on the part of said respondent, trade is diverted to respondent from such corporations, partnerships, firms, and individuals dealing in drugs, surgical instruments, and supplies as do not make such false, deceptive, disparaging, and misleading representations concerning their products, and thereby injury has been done and is being done by the respondent.

PAR. 6. Said false, deceptive, and misleading representations of said respondent contained in its catalogs, circulars, folders, letters, and cards have resulted in injury to respondent's competitors 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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1936, issued its complaint in the above-entitled proceeding and caused same to be served upon the respondent, the Sterling Products Corporation and Sterling Products Corporation trading as Paul Hartmann Agency, charging it with the use of unfair methods of competition in commerce in

violation of the provisions of said act. The respondent entered its appearance herein on May 16, 1936, and filed an answer to said complaint and thereafter testimony was introduced and evidence received at New York, N. Y., on June 4 and 5, 1936, and on August 7, 1936, at the instance of A. W. DeBirny, counsel for the Commission, and at New York, N. Y., on August 7, 1936, at the instance of David B. Levy, manager and vice president of said respondent before Edward M. Averill, an examiner for the Commission, duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter this proceeding regularly came on for final hearing before the Commission upon the Complaint herein, the answer thereto, the testimony taken and evidence received and brief by counsel for the Commission. No brief was filed by or on behalf of respondent and oral argument was waived by it, 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 respondent, Sterling Products Corporation, is a corporation organized under the laws of the State of New York with its principal office and place of business in New York City in said State. For a number of years said respondent has been engaged in the business of the sale of drugs, pharmaceuticals, surgical instruments, dressings, and surgical supplies and has caused same, when sold, to be transported from its place of business in the city and State of New York through and into or into other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business, respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of drugs, pharmaceuticals, surgical instruments, surgical dressings, and supplies in commerce among several of the States of the United States. Said respondent has carried on a portion of its business under the name and style of Paul Hartmann Agency. The business done by respondent consists of sales made as a result of mail orders sent to it by customers in various States of the United States.

PAR. 2. Respondent in the course of its business as set-out in paragraph 1 hereof, has caused catalogs, folders, circulars, circular letters, post cards, and other forms of printed advertising matter to be mailed from New York City in the State of New York to about 16,000 cus-

tomers and prospective customers in various other States of the United States in which advertising matter false and deceptive statements and representations were made concerning the drugs, pharmaceuticals, surgical instruments, surgical dressings, and supplies offered for sale and sold by respondent, also concerning those sold by some of its competitors. The evidence shows and the Commission finds that a substantial part of the purchasing public prefer medical supplies, surgical instruments, surgical dressings, and supplies of American manufacture to those of foreign manufacture. Among the false and deceptive statements and representations contained in the advertising matter so distributed by respondent, were statements and representations to the effect ethyl chloride tubes, ethyl chloride, distilled water, and glass ampules used to hold distilled water, were being sold by competitors as being wholly of domestic origin although such articles had been manufactured in a foreign country and imported from that country by such competitors; whereas a number of the competitors do in fact sell and offer for sale ethyl chloride tubes, ethyl chloride, and glass ampules for holding distilled water, all of which are manufactured in the United States and are entirely of domestic origin. Respondent also, in its said advertising matter, made statements to the effect that it was closing out its stock of foreign-made surgical instruments and that in the future would deal only in surgical instruments made in the United States. In fact, respondent was at the times said advertisements were disseminated, and continued thereafter, to purchase for resale surgical instruments manufactured in a foreign country and respondent continued to accept and fill any orders that came to it for surgical instruments manufactured in a foreign country. Various of the circulars disseminated by the respondent as aforesaid contained statements and representations to the effect that all of the surgical and medical products listed in said circulars were made in the United States. In truth and in fact, a medicated dressing listed in said circulars and designated "Kosmoplast" was not made in the United States but was made in a foreign country and imported into the United States.

PAR. 3. The use by the respondent of the aforesaid statements and representations to the effect that ethyl chloride tubes, ethyl chloride, and glass ampules, offered for sale and sold by competitors of respondent, were manufactured in a foreign country, when in truth and in fact said products were manufactured in the United States, has had and now has, the capacity and tendency to mislead and deceive customers and prospective customers of such competitors and to induce them to withhold orders for such articles which they had contemplated giving to such competitors of respondent and to give such

orders to respondent. The statements and representations in such advertising matter to the effect that respondent was closing out its stock of surgical instruments made in a foreign country and would in the future deal only in surgical instruments made in the United States, has had and now has, the capacity and tendency to deceive the members of the public into purchasing such instruments from respondent in the erroneous and mistaken belief that when respondent closed out its stock of foreign-made instruments it would then sell only surgical instruments made in the United States. The statements and representations in said circulars to the effect that said medicated dressing was made in the United States when in fact said merchandise was made in a foreign country has had, and now has, the capacity and tendency to cause members of the purchasing public to purchase said merchandise in the erroneous and mistaken belief that said merchandise was made in the United States. As a direct result of the aforesaid false and misleading statements and representations by the respondent, trade in commerce among and between the various States of the United States has been unfairly diverted to the respondent from its competitors who deal only in surgical instruments of American manufacture and who do not falsely misrepresent the place of manufacture of their respective merchandise or of the merchandise of their competitors.

CONCLUSION

The acts, practices, and representations of the respondent, Sterling Products Corporation and Sterling Products Corporation, trading as Paul Hartmann Agency, as herein found, are to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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, 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, brief filed by counsel for the Commission, respondent not having filed brief, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Sterling Products Corporation, trading under its own name and trading as Paul Hartmann Agency, or trading under any other name or names, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of drugs, pharmaceuticals, surgical instruments, dressings, and surgical supplies, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that ethyl chloride tubes, ethyl chloride, or any other merchandise of respondent's competitors were made in whole or in part in a foreign country, when in fact said products were made wholly in the United States.

2. Representing that respondent is closing out its stock of foreign-made surgical instruments, when such is not the fact.

3. Representing that respondent deals only in surgical instruments manufactured wholly in the United States, when in fact respondent fills orders or causes orders to be filled for surgical instruments manufactured in whole or in part in a foreign country.

4. Representing that respondent's surgical supplies or other merchandise were made in the United States, when in fact said surgical supplies or other merchandise were made in whole or in part in a foreign country.

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

C. R. ANTHONY COMPANY, BURRELL-BERGER, INC., MISS PLAZA, INC., SAMUEL R. PARNES, INC., AND GORGEOUS FROCKS, INC.

COMPLAINT, FINDINGS, 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 THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3834. Complaint, June 27, 1939—Decision, Sept. 12, 1939.

Where (*a*) four corporations which (1) were engaged in sale of merchandise to corporate operator of 57 retail department stores in Oklahoma, Kansas, Texas, and New Mexico, in active competition with other manufacturers and sellers of similar merchandise engaged in selling and distributing their said products to said operator and its competitors, and which (2) were fairly representative of large group of sellers likewise engaged, as aforesaid indicated, in manufacture and sale of women's apparel, allied and other merchandise, in interstate commerce to said operator and other purchasers; and (*b*) other sellers—

Transmitted, paid, and delivered to said operator, under separate name employed by it in thus purchasing from its New York office for its stores aforesaid, so-called brokerage fees and commissions, consisting of various percentages on quoted sales prices, as agreed upon between each of said sellers and said corporate operator, and in connection with which no services whatsoever were rendered to, for, or in behalf of, aforesaid four, or any other, sellers by said corporate operator, under either its own name or name employed by it in thus purchasing, as above set forth; and

Where said corporate operator engaged as aforesaid, under separate name employed by it in purchasing from its New York office and through its own employees for its aforesaid stores—

Received and accepted, and was enabled to receive and accept, through instrumentality of said separate name thus made use of by it, so-called brokerage fees or commissions upon merchandise purchased by it from said various sellers aforesaid, and in or as result of transactions in which it was sole party in interest and actual purchaser, and in connection with which, as above set forth, it rendered in neither capacity any services whatsoever to such sellers:

Held, (1) That such payments by sellers aforesaid of fees and commissions to said corporate operator under name employed by it as above set forth, and upon its said purchases, constituted violation of subsection (c) of section 2 of Clayton Act, as amended, and

(2) That such receipt and acceptance of fees and commissions paid as brokerage by and from aforesaid and other sellers, by said corporate operator under name employed by it as aforesaid and in connection with merchandise purchased by it, and through and by means of instrumentality of separate name employed as aforesaid, constituted violation of subsection (c) of section 2 of statute in question.

Mr. F. Hier for the Commission.

Cantrell, Savage & McCloud, of Oklahoma City, Okla., for C. R. Anthony Co.

Mr. Meyer Halpern, of New York City, for Burrell-Berger, Inc.

Mr. Samuel M. Reiss, of New York City, for Miss Plaza, Inc.

Mr. Maxwell Parnes, of New York City, for Samuel R. Parnes, Inc.

Goldberg & Hatterer, of New York City, for Gorgeous Frocks, Inc.

Complaint

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection C, section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13) hereby issues its complaint stating its charges with respect thereto as follows:

Paragraph 1. Respondent C. R. Anthony Co., is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma with its principal office and place of business at 540 First National Bank Building, Oklahoma City, Okla. Said C. R. Anthony Co. owns and operates 57 retail department stores located in the States of Oklahoma, Kansas, Texas, and New Mexico.

Par. 2. Respondent C. R. Anthony Co. also maintains an office in Room 1409 at 1450 Broadway, New York City, N. Y., under the name of The Anco Co. All maintenance expenses of said office, including salaries, are paid by the respondent C. R. Anthony Co. and the functions of the said New York City office are wholly performed by employees of said respondent C. R. Anthony Co. on a flat salary basis paid solely by said respondent, which employees act for and in behalf of, and are subject to and under the direct and exclusive control of said respondent C. R. Anthony Co.

Said employees purchase for and in the name of respondent C. R. Anthony Co., the requirements of its retail department stores consisting of women's apparel, allied, and other merchandise from various sellers and manufacturers located in New York City, among whom are the seller respondents hereinafter named. The merchandise so purchased is then shipped by said sellers from New York City into and through the various States of the United States to the various retail department stores of the respondent, C. A. Anthony Co., invoices therefor being sent to and paid by said respondent C. R. Anthony Co.

PAR. 3. Respondent Burrell-Berger, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 1375 Broadway, New York City, N. Y.

Respondent Miss Plaza, 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 at 1400 Broadway, New York City, N. Y.

Respondent Samuel R. Parnes, 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 at 1400 Broadway, New York City, N. Y.

Respondent Gorgeous Frocks, 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 at 1400 Broadway, New York City, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. Each of said seller respondents is engaged in the sale of merchandise to respondent C. R. Anthony Co., and to other customers in States other than the State of New York, pursuant to which sales merchandise is shipped and caused to be transported by each of said seller respondents into and through various States of the United States to their respective customers. Said seller respondents are fairly typical and representative members of a large group or class of manufacturers and sellers engaged in selling their merchandise in interstate commerce to respondent C. R. Anthony Co. and to its competitors, but the sellers comprising said group are too numerous to be specifically named herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 5. In the course of the purchasing transactions by the respondent C. R. Anthony Co., under the name of The Anco Co., as set forth in paragraph 2 hereof, said seller respondents and other sellers have since June 19, 1936, transmitted, paid, and delivered and do transmit, pay, and deliver to said respondent C. R. Anthony Co., under the name The Anco Co., so called brokerage fees and commissions, the same being a certain percentage on quoted sales prices agreed upon between each of the said sellers and the respondent C. R. Anthony Co., and said respondent C. R. Anthony Co., since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions paid to it under the name of The Anco Co., upon merchandise purchased by said respondent C. R. Anthony Co., under the name of The Anco Co., while said

respondent C. R. Anthony Co., is the sole party in interest in and is the actual purchaser in said transaction.

In all of the purchasing transactions hereinabove referred to, in connection with which the so-called brokerage fees or commissions have been and are paid and transmitted by said seller respondents and other sellers and have been and are accepted and received by said respondent C. R. Anthony Co., no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for, or on behalf of said seller respondent or any other sellers by said respondent C. R. Anthony Co. under its own name or under the name of The Anco Co.

PAR. 6. The transmission and payment of said so-called brokerage fees or commissions by the seller respondents and other sellers to and the receipt and acceptance thereof by the respondent C. R. Anthony Co. under the name of The Anco Co. in the manner and under the circumstances hereinabove set forth, is in 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 the act of Congress entitled "An Act to amend section 2 of an 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 an 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 the Robinson-Patman Act, approved June 19, 1936 (title 15, Sec. 13), the Federal Trade Commission, on June 27, 1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of the said act, as amended. After the issuance and service of said complaint, an answer admitting all of the material allegations as set forth in the complaint to be true was filed on behalf of the respondent, C. R. Anthony Co. Answers on behalf of all the other respondents were also duly filed, admitting in each instance that each respondent sold and shipped merchandise to the respondent, C. R. Anthony Co., and paid brokerage thereon to the Anco Co., but each answer, with the

exception of that filed on behalf of the respondent, Gorgeous Frocks, Inc., denied knowledge that the Anco Co. was, in fact, the C. R. Anthony Co. The answer of Gorgeous Frocks, Inc., admitted all of the material facts set forth in the complaint.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers filed thereon, 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 the following findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent, C. R. Anthony Co., is a corporation under the laws of the State of Oklahoma, with its principal office and place of business at 540 First National Bank Building, Oklahoma City, Okla., owning and operating 57 retail department stores located in the States of Oklahoma, Kansas, Texas, and New Mexico.

PAR. 2. That respondent C. R. Anthony Co. also maintains an office in Room 1409 at 1450 Broadway, New York City, N. Y., under the name of The Anco Co. All maintenance expenses of said office, including salaries, are paid by the respondent, C. R. Anthony Co., and the functions of the said New York City office are wholly performed by employees of said respondent C. R. Anthony Co. on a flat salary basis paid solely by said respondent, which employees act for and in behalf of, and are subject to and under the direct and exclusive control of, said respondent C. R. Anthony Co.

That said employees purchase for, and in the name of, respondent C. R. Anthony Co. the requirements of its retail department stores, consisting of women's apparel, allied, and other merchandise from various sellers and manufacturers located in New York City, among whom are the seller respondents hereinafter named. The merchandise so purchased is then shipped by said sellers from New York City into and through the various States of the United States to the various retail department stores of the respondent, C. R. Anthony Co., invoices therefor being sent to and paid by said respondent C. R. Anthony Co.

PAR. 3. That respondent Burrell-Berger, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1375 Broadway, New York City, N. Y.

That respondent Miss Plaza, 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 at 1400 Broadway, New York City, N. Y.

That respondent Samuel R. Parnes, 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 at 1400 Broadway, New York City, N. Y.

That respondent Gorgeous Frocks, 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 at 1400 Broadway, New York City, N. Y.

The respondents named in this paragraph are hereinafter referred to as "seller respondents."

PAR. 4. That each of said seller respondents is engaged in the sale of merchandise to respondent C. R. Anthony Co. and to other customers in States other than the State of New York, pursuant to which sales merchandise is shipped and caused to be transported by each of said seller respondents into and through various States of the United States to their respective customers. The seller respondents are fairly representative of a large group of sellers engaged in manufacturing and selling women's apparel, allied, and other merchandise, which they sell and ship in interstate commerce to the respondent, C. R. Anthony Co., and to other purchasers thereof. Each of the seller respondents actively competes with other manufacturers and sellers of similar merchandise in distributing the same in interstate commerce to the respondent, C. R. Anthony Co., and its competitors.

PAR. 5. That in the course of the purchasing transactions by the respondent, C. R. Anthony Co., under the name of The Anco Co., said seller respondents and other sellers have, since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver, to said respondent C. R. Anthony Co. under the name, The Anco Co., so-called brokerage fees and commissions, the same being various percentages on quoted sales prices agreed upon between each of the said sellers and the respondent, C. R. Anthony Co., and said respondent C. R. Anthony Co., since June 19, 1936, has received and accepted, and is receiving and accepting, such so-called brokerage fees or commissions paid to it under the name of The Anco Co., upon merchandise purchased by said respondent C. R. Anthony Co., under the name of The Anco Co., while said respondent C. R. Anthony Co., is the sole party in interest in and is the actual purchaser in said transaction. That the respondents, Burrell-Berger, Inc., Miss Plaza, Inc., and Samuel R. Parnes, Inc., state in their answer that they were unware that The Anco Co. was in fact the C. R. Anthony Co.

In all of the purchasing transactions hereinabove referred to, in connection with which the so-called brokerage fees or commissions

have been, and are, paid and transmitted by said seller respondents and other sellers, and have been, and are, accepted and received by said respondent C. R. Anthony Co., no services whatsoever in connection with said purchases have been rendered, or are now being rendered, to, for, or in behalf of said seller respondent or any other sellers by said respondent C. R. Anthony Co., under its own name, or under the name of The Anco Co.

CONCLUSION

The Commission concludes that the respondents, Burrell-Berger, Inc., Miss Plaza, Inc., Samuel R. Parnes, Inc., and Gorgeous Frocks, Inc., have violated, and are now violating, subsection (c) of section 2 of the Clayton Act, as amended, by paying fees and commissions as brokerage to the respondent, C. R. Anthony Co., under the name of The Anco Co., upon the purchases of the respondent, C. R. Anthony Co.

The Commission further concludes that the respondent, C. R. Anthony Co., under the name of The Anco Co., has violated, and is violating, the provisions of said subsection (c) of section 2 of said statute by receiving and accepting fees and commissions paid as brokerage by and from the seller respondents and other sellers in connection with merchandise purchased by the respondent, C. R. Anthony Co., and further that the name of The Anco Co. as adopted and used by the respondent, C. R. Anthony Co. is an instrumentality and means by which the said respondent C. R. Anthony Co., has been and is enabled to receive and accept the same.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer filed herein by the respondent, C. R. Anthony Co., admitting all the material allegations of the complaint to be true, and the answers of the other respondents, 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 respondents have 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 by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That respondents Burrell-Berger, Inc., Miss Plaza, Inc., Samual R. Parnes, Inc., Gorgeous Frocks, Inc., and their

officers, representatives, agents, and employees, in connection with the sale and distribution of any merchandise or commodities in interstate commerce, do forthwith cease and desist from paying or granting or causing or permitting to be paid or granted to the C. R. Anthony Co., its officers, representatives, agents, or employees, directly or under the name of The Anco Co., or in or under any other name, any fee or commission as brokerage or any allowance in lieu thereof, upon purchases made by the respondent, C. R. Anthony Co., in its own or any other name.

It is further ordered, That respondent C. R. Anthony Co., its officers, representatives, agents, and employees, in connection with the purchase by it of merchandise or commodities in interstate commerce to do forthwith cease and desist from receiving or accepting any fee or commission as brokerage or any allowance in lieu thereof in its own name, in the name of The Anco Co., or in any other name.

It is further ordered, That the respondents, and each of them, 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

WILLIAM EVERETTE, DOING BUSINESS AS W. E. & M. E. MEDICINE COMPANY

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

Docket 3087. Complaint, Mar. 24, 1937—Decision, Sept. 18, 1939

Where an individual engaged in selling and marketing medicinal preparation designated by him as "W. E. & M. E. Herb Tonic," to purchasers in other States, in substantial competition with others engaged in sale and distribution of like and similar products, or other products and treatments designed, intended, and used for similar purposes, in commerce among the various States; in advertising matter circulated, as aforesaid, to promote sale of his said "Herb Tonic," and which contained drugs prescribed by doctors for some of ills which it was represented to relieve, but with indicated dosage which did not give users amounts of such drugs, even as laxative, as recommended by medical profession in most cases—

(*a*) Represented that use of said preparation purified the blood and relieved all acute pains, and that it contained no harmful ingredients, facts being protracted use thereof might be injurious to health and cause undesirable results, and said preparation would not purify the blood, but therapeutic value thereof was limited to the efficacy of its laxative properties, and it would not relieve all acute pains;

(*b*) Represented that said product relieved constipation, facts being it had no therapeutic value in treatment of said condition other than affording, in some cases, temporary relief therefrom;

(*c*) Represented that said preparation was a male and female body builder, facts being it was not such a body builder in the sense that it would stimulate sexual organs or sex systems;

(*d*) Represented that said preparation had therapeutic value in treatment of hemorrhoids, facts being it had no therapeutic value in treatment of said condition, other than affording, in some cases, temporary relief therefrom;

(*e*) Represented that said preparation had therapeutic value in treatment of chills, fever, and disorders of the skin, facts being it had no such value, other than affording in some cases, temporary relief therefrom when such conditions were due to constipation;

(*f*) Represented that said preparation was a remedy for and would relieve backache or disorders of the liver or kidneys, facts being it was not such a remedy and would not accomplish such results, and had no substantial therapeutic value in affording relief from such conditions; and

(*g*) Represented that said preparation was a remedy for disorders of the stomach, indigestion and cramp, and constituted a cure for the menopause, and would relieve sufferings caused thereby, facts being it was not such a remedy or cure for said condition and would not relieve such sufferings;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that said representations were true, and to induce number of said public to buy substantial quantity of said product, which they would not, absent such belief, purchase, and, as

direct consequence of such belief induced by said representations, to cause number of said public to buy substantial quantities, with result of thereby diverting trade unfairly to said individual from his competitors aforesaid, who truthfully advertise and represent their respective preparations:

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

Before *Mr. John W. Addison* and *Mr. E. J. Hornibrook*, trial examiners.

Mr. Floyd O. Collins and *Mr. George Foulkes* for the Commission.

Mr. Henry Drizin, of Philadelphia, Pa., for respondent.

Complaint

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that William Everette, an individual, doing business under the trade name of W. E. & M. E. Medicine Co., hereinafter referred to as respondent, has been, and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. William Everette is an individual, doing business under the trade name of W. E. & M. E. Medicine Co., and his principal place of business is located at 509 North Fifty-eighth Street, Philadelphia, Pa.

Par. 2. Respondent is now, and has been for more than 1 year last, engaged in the sale and distribution of a medicinal preparation designated "W. E. & M. E. Herb Tonic," and recommended for various and sundry diseases and ailments, as will be more fully set out hereinafter. The respondent causes said product when sold, to be shipped and transported in interstate commerce from his place of business, located in Philadelphia, Pa., to purchasers thereof located at various points in States of the United States other than the State of Pennsylvania. He now maintains, and has at all times mentioned herein maintained a constant current 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. Respondent, in the course and conduct of his business as aforesaid, is now, and at all times herein referred to has been, in

active, substantial competition with other individuals and corporations, firms, and partnerships likewise engaged in the sale and distribution of other preparations prepared, manufactured, advertised, and sold for substantially the same purpose and use for which respondent's product is advertised and sold in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of his business as aforesaid, and for the purpose of inducing individuals to purchase said preparation, W. E. & M. E. Herb Tonic, has caused advertisements to be inserted in newspapers and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States, by United States mail and otherwise, to customers and prospective customers, certain advertising folders and literature and other advertising matter, in all of which the respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed, and in which the following statements are made:

W. E. & M. E. Herb Tonic improves circulation—purifies the blood—male and female body builder—relieves constipation, piles, chills and fever, backache, kidney, liver, stomach, and skin disorders.

For years I have suffered with indigestion, nervousness, and loss of appetite. I became pallid from loss of sleep and was much underweight. After taking W. E. & M. E. for about four weeks I was greatly surprised at the results.

For years I suffered through change of life. After taking two bottles of W. E. & M. E. Herb Tonic I have been completely cured.

No harmful ingredients.

Relieves all acute pains.

It relieves indigestion, pains, or cramps in five to ten minutes; also liver, kidney, stomach, and blood disorders, constipation, headache, and sleepiness.

All of said statements, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, W. E. & M. E. Herb Tonic. In all of 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 said product will purify the blood and is a male and female body builder; that the use of said product will relieve constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, pains or cramps and all acute pains; that it is very effective as a cure for change of life; and that no ingredient in said preparation is harmful.

PAR. 5. The claims and representations made by the respondent with respect to the therapeutic value of the preparation, W. E. & M. E. Herb Tonic, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's product, W. E. & M. E. Herb Tonic will not improve circulation. It is not a blood purifier. Said preparation has no value as a tonic and is not a male and female body builder. It is not an adequate remedy for constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, backache, or cramps. Neither will it relieve the suffering caused by any of said ailments. It is not a competent treatment for, and has no effect on, change of life. There are some ingredients in said preparation that are harmful if present in sufficient quantities.

PAR. 6. There are, among respondent's competitors, many who prepare, distribute, and sell to the purchasing public medicines or treatments for bad circulation, impure blood, constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, pains and cramps, and tonics for those suffering through change of life, who in no way misrepresent the quality, efficacy, or therapeutic value of their product, and with these competitors respondent is in active, substantial competition.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing his product, W. E. & M. E. Herb Tonic, and its effectiveness, 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 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 respondent's acts and representations, as hereinabove set out, trade has been unfairly diverted to the respondent from competitors likewise engaged in the preparation, selling, and distributing of preparations sold and distributed for substantially the same purpose and use for which respondent's product is sold and distributed; and as a result of the 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 and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are all to the injury and prejudice of the public and respondent's competitors, and have been and are unfair methods in commerce, within the meaning and intention 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 March 24, 1937, issued and served its complaint in this proceeding upon respondent, William Everette, an individual doing business under the trade name of W. E. & M. E. Medicine Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, attorney for the Commission and in opposition to the allegations of the complaint by Henry Drizin, attorney for the respondent, before John W. Addison and E. J. Hornibrook, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commssion. 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, respondent not having filed brief, 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. William Everette, 509 North Fifty-eighth Street, Philadelphia, is an individual, trading at this address as W. E. & M. E. Medicine Co.

Par. 2. Respondent is engaged in the business of selling and marketing a medicinal preparation designated by him as W. E. & M. E. Herb Tonic.

Par. 3. Respondent causes said product, when sold, to be transported from his place of business in Pennsylvania to purchasers thereof at their respective points of location in other States of the United States. Respondent maintains and has maintained a course of trade in said product in commerce between and among the various States of the United States.

Par. 4. Respondent is in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States.

PAR. 5. Respondent, to promote the sale of said herb tonic, represents in advertising matter circulated among the several States that said tonic, when used by men and women purifies the blood; is a male and female body builder; relieves constipation, piles, chills and fever, backache, disorders of kidneys, liver, stomach and skin, indigestion, pains and cramps, and all acute pains; is an effective cure for change of life and contains no harmful ingredients.

PAR. 6. In truth and in fact said preparation is made of Epsom salts (the only nonvolatile part) and essence of peppermint, added to caramel, powdered rhubarb, whole Cape Aloes, lily of the valley, roots (blacksnake, Virginia snake, blood, queen, ginger, golden seal, poke, dandelion), barks (oak, wild cherry), and leaves (bachu, rosemary) boiled for 9 hours. Protracted use of said preparation may be injurious to health, as for example, when used for stomach pains caused by ulcers; the use of said preparation may also cause congestion of the pelvis and it may irritate hemorrhoids and make menstruation more painful. Said preparation is a simple laxative, sedative, and tonic and as such may have incidental benefits for some of the ailments it is represented to relieve. Said preparation does not purify the blood. The therapeutic value of said preparation in the treatment of the blood is limited to the efficacy of the laxative properties of said preparation. Said preparation has no therapeutic value in the treatment of constipation other than affording, in some cases, temporary relief from such condition. Said preparation will not relieve all acute pains. Said preparation is not a male or female body builder in the sense that it will stimulate sexual organs of the sex systems. Said preparation has no therapeutic value in the treatment of piles other than the affording, in some cases, temporary relief from the suffering incident thereto. Said preparation has no therapeutic value in the treatment of chills or fever or disorders of the skin other than affording, in some cases, temporary relief when such conditions are due to constipation. Said preparation is not a remedy for, and will not relieve, backache and is not a remedy for disorders of the liver or kidneys and has no substantial therapeutic value in affording relief from such conditions. Said preparation is not a remedy for disorders of the stomach or for indigestion or cramps. Said preparation is not a cure for change of life or menopause and will not relieve the sufferings caused by such condition. Said preparation contains drugs prescribed by doctors of medicine for some of the ills it is represented to relieve, but the dosage indicated by respondent does not give users the amounts of these drugs, even as a laxative, that are recommended by the medical profession in most cases.

PAR. 7. Each and all of the false and misleading representations so made by respondent, as set forth above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said preparation which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief induced by the representations of respondent as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said preparation with the result that trade has been diverted unfairly to respondent from his said competitors who truthfully advertise and represent their respective preparations.

CONCLUSION

The aforesaid acts and representations of respondent, William Everette, have been, and 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 of respondent, testimony and other evidence taken before John W. Addison and E. J. Hornibrook, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the brief of counsel for the Commission filed herein (respondent not having filed a brief 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 the Federal Trade Commission Act.

It is ordered, That respondent William Everette, individually and doing business under the trade name of W. E. & M. E. Medicine Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his medical preparation now designated as W. E. & M. E. Herb Tonic, or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties whether sold under that

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

1. Representing that the use of said preparation purifies the blood or relieves all acute pains or contains no harmful ingredients.

2. Representing that said preparation has any therapeutic value in the treatment of constipation unless such representation is limited to statements to the effect that said preparation may, in some cases, afford temporary relief from such condition.

3. Representing in any manner that said preparation will stimulate the sexual organs or system.

4. Representing that said preparation has any therapeutic value in the treatment of piles unless such representation is limited to statements to the effect that said preparation may, in some cases, afford temporary relief from the suffering caused by such condition.

5. Representing that said preparation has any therapeutic value in the treatment of chills or fever or disorders of the skin unless such representations are limited to statements to the effect that said preparation may, in some cases, afford temporary relief therefrom when such conditions are due to constipation.

6. Representing that said preparation is a remedy for, or will relieve, backache or disorders of the liver or kidneys.

7. Representing that said preparation is a remedy for disorders of the stomach, indigestion or cramps, or is a cure for the menopause or will relieve the sufferings caused by such condition.

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

IN THE MATTER OF

MARTIN CUSTOM MADE TIRES CORPORATION

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

Docket 3585. Complaint, Sept. 14, 1938—Decision, Sept. 18, 1939.

Where a corporation engaged in manufacture and sale of pneumatic automobile and truck tires to purchasers in various other States and in the District of Columbia, in substantial competition with those engaged in sale and distribution of similar products in commerce as aforesaid, and including many who sell and distribute such tires and do not misrepresent manner and quality of construction or number of plies contained therein—

Placed on the wrappings encasing its tires certain representations intended to portray, represent, and indicate, among other things including manufacturer's name, size, etc., numerical ply structure, and fact that tires were custom built, and affixed or molded into the side walls of its tires words, letters, or phrases stating tires were built as aforesaid, and colored permanent marks, brands, or insignia with certain words, letters, figures, or phrases intended to be representative and indicative of number of plies contained and existing in structure of products in question, facts being certain of the tires marked by it as aforesaid were not truthfully marked and branded, and did not contain number of plies thus indicated, in accordance with well-known and accepted custom and usage, but substantially smaller number;

With tendency and capacity to mislead and deceive substantial portion of purchasing public as to number of plies actually contained in tires in question, and with result, as direct consequence of such erroneous and mistaken belief, that number of the public purchased substantial volume of its said tires, and trade was diverted unfairly to it from its competitors aforesaid, likewise engaged in selling and distributing such products, and with effect of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that its said tires contained actual number of plies as indicated by its said representations:

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

Mr. B. G. Wilson for the Commission.

Strauss, Riech & Boyer, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Martin Custom Made Tires Corporation, a corporation, hereinafter referred to as

respondent, has violated the provisions of the 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, Martin Custom Made Tires 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 645 Eleventh Avenue, New York, N. Y., and its factory located at Salem in the State of Ohio.

Respondent is engaged in the manufacture and sale of pneumatic automobile and truck tires, and causes said products, when sold, to be transported from its place of business in New York, N. Y., and from its factory in Salem, Ohio, to the purchasers thereof located in States of the United States other than the States of New York and Ohio, and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said pneumatic automobile and truck tires, 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 said business, respondent is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of pneumatic automobile and truck tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of said pneumatic automobile and truck tires, respondent has made many representations concerning the character and quality of said products, by means of letters, blotters, signs, and price lists circulated generally among dealers and by means of tire wrappings, markings, insignia, and brands appearing on tires distributed to dealers located in the various States of the United States and in the District of Columbia.

Respondent has caused to be placed and affixed on the tire wrappings encasing its tires, certain representations purporting to portray, represent, and indicate the manufacturer's name, the respective size, type, and numerical ply structure, and the fact that said tires are custom built.

Respondent has caused to be placed, affixed, or molded on or into the sidewalls of said tires certain words, letters, or phrases stating that said tires are custom built and has further caused to be placed, affixed, or molded on or into the side walls of said tires, conspicuous

tricolored permanent marks, brands, or insignia in the form and shape of shields, said shields depicting in their centers certain words, letters, figures, or phrases which purport to be representative and indicative of the number of plies contained and existing in the structure of the tires whereon they appear.

The words, letters, figures, phrases, or insignia, as appearing on or in the wrappings, sidewalls, and shields of respondent's tires, purport to be representative, descriptive, and indicative of the manner and quality of construction and of the actual number of plies contained and existing in respondent's said products.

Respondent, directly or by inference, through the means and methods hereinabove set out and by other means and methods of similar import and effect, represents that its pneumatic automobile and truck tires are custom built and are made and constructed of the actual number of plies as indicated by the words, letters, figures, phrases, or insignia as depicted and shown on the wrappings and sidewalls of said tires.

The manner and quality of construction and the number of plies contained are substantial factors considered in the choice for purchase of pneumatic automobile and truck tires. The term "custom built," when correctly used, describes goods or products specially made to order; through extended usage the term has acquired a well known secondary meaning, commonly associated with goods or products of a value superior to the comparable general commercial standard. It is a known fact regarding tires of identical or similar quality of material and workmanship that the manufacturer, retail dealer, and purchasing public have long been accustomed to offer and accept as indicative of greater value the tire containing the larger number of plies in its structure.

There is a custom and usage in the Rubber Tire Industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and truthfully indicate the number of plies existing in the construction of such tires.

This custom and usage is well known to the public and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and sidewalls of said tires.

PAR. 5. The said representations, as made by respondent with respect to the manner and quality of construction and the actual number

of plies contained and existing in certain of its pneumatic automobile and truck tires are false, misleading, and untrue.

In truth and in fact respondent's tires are not custom made. Many of respondent's tires, represented as being made and constructed of a specific number of plies, do not contain the actual specific number of plies as therein indicated by the words, letters, phrases, figures, or insignia depicted on the wrappings or shields appearing on said tires.

The true facts are that respondent's tires are not made to specific special order. Respondent's tires are made and stocked in the ordinary course of respondent's business and are of a material, quality, and workmanship standard comparable to the like products of competing manufacturers.

Many of respondent's pneumatic automobile and truck tires are correctly marked and branded in that the number of plies contained and existing in the structure of said tires are as represented and indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing thereon.

Certain tires of respondent are not truthfully marked and branded. The number of plies contained and existing in the structure of these tires are not as represented by respondent, but are of a substantially lesser number than as indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 6. There are among respondent's competitors many who sell and distribute pneumatic automobile and truck tires who do not misrepresent the manner and quality of construction or the number of plies contained in their respective products.

PAR. 7. Each and all of the false and misleading representations made by the respondent in describing the manner and quality of construction and the number of plies actually contained or existing in the structure of its pneumatic automobile and truck tires as hereinbefore set out were and are calculated to have 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 said representations are true. As a direct result of this erroneous and mistaken belief a number of the public have purchased a substantial volume of the respondent's products with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in selling and distributing pneumatic automobile and truck tires who truthfully represent the manner and quality of construction and correctly mark or brand their respective products as to the actual number of plies therein contained.

Respondent's acts and practices, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that respondent's products are custom built and contain the actual number of plies as indicated by respondent's representations.

As a consequence thereof, injury has been done, and is now being done, by respondent to competition and commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 14th day of September 1938 issued and on the 17th day of September 1938 served its complaint in this proceeding upon said respondent, Martin Custom Made Tires Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 Strauss, Riech & Boyer, counsel for 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 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, accepted, and filed, 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, Martin Custom Made Tires 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 645 Eleventh Avenue, New York, N. Y., and its factory located at Salem in the State of Ohio.

PAR. 2. Respondent is engaged in the manufacture and sale of pneumatic automobile and truck tires, and causes said products, when sold, to be transported from its place of business in New York, N. Y., and from its factory in Salem, Ohio, to the purchasers thereof located in States of the United States other than the States of New York and Ohio, and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said pneumatic automobile and truck tires, sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in the course and conduct of its business is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of pneumatic automobile and truck tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said pneumatic automobile and truck tires, has made many representations concerning the character and quality of said products, by means of letters, blotters, signs, and price lists circulated generally among dealers and by means of tire wrappings, markings, insignia, and brands appearing on tires distributed to dealers located in the various States of the United States and in the District of Columbia.

PAR. 6. Respondent has caused to be placed and affixed on the tire wrappings encasing its tires, certain respresentations which were and are intended to portray, represent, and indicate the manufacturer's name, the respective size, type, and numerical ply structure, and the fact that such tires are custom built.

PAR. 7. Respondent has caused to be placed, affixed, or molded on or into the side-walls of said tires certain words, letters, or phrases stating that said tires are custom built and has further caused to be placed, affixed, or molded on or into the sidewalls of said tires, conspicuous tricolored permanent marks, brands, or insignia in the form

and shape of shields, said shields depicting in their centers certain words, letters, figures, or phrases which were and are intended to be representative and indicative of the number of plies contained and existing in the structure of the tires whereon they appear.

PAR. 8. There is a custom and usage in the Rubber Tire Industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and truthfully indicate the number of plies existing in the construction of such tires. This custom and usage is well known to the public, and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and sidewalls of said tires.

PAR. 9. Many of respondent's pneumatic automobile and truck tires are correctly marked and branded in that the number of plies contained and existing in the structure of said tires are as represented and indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 10. Certain tires of respondent are not truthfully marked and branded. The number of plies contained and existing in the structure of these tires are not as represented by respondent, but are of a substantially lesser number than as indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 11. There are among respondent's competitors many who sell and distribute pneumatic automobile and truck tires who do not misrepresent the manner and quality of construction or the number of plies contained in their respective products.

PAR. 12. The false and misleading representations made by the respondent in describing the number of plies contained or existing in the structure of certain of its pneumatic automobile and truck tires as hereinbefore set out were and are calculated to have, have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the number of plies actually contained in said tires. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of the respondent's products with the result that trade has been diverted unfairly to respondent from competitors referred to in paragraphs 4 and 11 who are likewise engaged in selling and distributing pneumatic automobile and truck tires.

PAR. 13. Respondent's acts and practices, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that respondent's products contain the actual number of plies as indicated by respondent's representations.

CONCLUSION

The foresaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the facts entered into between counsel for 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, Martin Custom Made Tires Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pneumatic automobile and truck tires in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist:

1. From representing directly or indirectly by means of letters, blotters, words, figures, price lists, tire wrappings, markings, insignia, or brands appearing on respondent's automobile and truck tires or in any other way, that the tires sold by respondent contain more plies in their construction than they actually contain.

2. From representing directly or indirectly that the construction of respondent's tires or the materials therein contained are other than the actual construction and materials contained in said tires.

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

CONSOLIDATED CANDY COMPANY, INC., A CORPORATION, AND LESLIE FINUCANE, INDIVIDUALLY, AND AS AN OFFICER OF CONSOLIDATED CANDY 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 3657. Complaint, Dec. 3, 1938—Decision, Sept. 18, 1939.

Where a corporation and an individual, who was secretary and treasurer thereof and formulated and directed its practices and policies, engaged in manufacture and sale of candy and nut confections which were sold, packed and assembled so as to involve use of a lottery scheme when sold and distributed to the consumers thereof and which included (1) number of bars of a nut confection or candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which customer received the confection or candy without cost or paid therefor 1, 2, or 3 cents, dependent upon the securing by chance of the letter O or number 1, 2, or 3 in accordance with disk selected on card, and (2) various other assortments of candy and nut confection which involved lottery or chance feature in method of sale and distribution, but were similar to that above described and varied therefrom in detail only; and acting in cooperation with one another in the matters here involved—

Sold to dealers for display and resale by retail dealer purchasers thereof in accordance with aforesaid sales plan such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their product in accordance with such sales plan involving game of chance or sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than normal retail price thereof, contrary to an established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer and sell candy and nut confections 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 and refrain therefrom;

With tendency and capacity to induce purchasers of their candy and nut confections to buy their said products in preference to those offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy and nut confections were attracted by their said method and manner of packing such products and by element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase such candy and nut confections thus packed and sold by them in preference to products offered and sold by their competitors aforesaid who do not use same or equivalent or similar method, and with tendency and capacity through use of such method and because of said game of chance to divert to them trade and custom from their said competitors who do not use any such method, to exclude from candy and nut confections trades all competitors who are unwilling to and do not use same or equivalent or

similar method as unlawful, to lessen competition therein and to create monopoly thereof in them and such other distributors of candy and nut confections as use same or equivalent or similar method, and to deprive purchasing public of benefit or free competition in trades in question, and with tendency and capacity, through the use of such method by them in sale of their products, to eliminate from trades involved all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent or similar methods:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. D. C. Daniel for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Consolidated Candy Co., Inc., a corporation, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Consolidated Candy Co., Inc., is a corporation with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Individual respondent Leslie Finucane, is secretary and treasurer of said corporation and has his principal office at the same address as corporate respondent. Said individual respondent controls, formulates, and directs the practices and policies of Consolidated Candy Co., Inc. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

Respondents are now and for some time last past have been engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers. Respondents cause and have caused their products, when sold, to be shipped or transported from the aforesaid principal place of business in Texas to purchasers thereof in the various 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 by said respondents in such candy and nut confections in commerce between and among the various States of the United States and in the District of Columbia. 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 candy and nut confections 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 and nut confections so packed and assembled so as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of bars of a nut confection or candy, together with a device commonly called a push card. The push card contains a number of partly perforated disks and on the face of each disk is printed the word "push." Within each of said disks is printed either the letter O or number 1, 2, or 3, and the persons pushing the disk containing the letter O receive bars of said nut confection or candy without cost, and the persons pushing the disks containing the number 1, 2, or 3, pay in cents the amount of the number pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until a push has been made and the disks separated or removed from said card. The fact as to whether a customer receives a bar of said nut confection or candy without charge, or the price to be paid therefor, is determined wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of candy and nut confections involving a lottery or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase assortments of respondents' candy or nut confections, 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 a means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of candy and nut confections to purchase respondents' said products in preference to candy and nut confections offered for sale and sold by their competitors.

PAR. 4. The sale of said candy or nut confections to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than the normal retail price

thereof. The use by respondents of said method in the sale of candy and nut confections, and the sale of candy and nut confections by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondents of said method in the sale of their products has the 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 candy and nut confection trades 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 and nut confections in competition with the respondent, as above alleged, are unwilling to offer for sale and sell candy and nut confections 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 nut confections are attracted by respondents' said method and manner of packing said candy and nut confections 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 nut confections so packed and sold by respondents in preference to candy and nut confections offered for sale and sold by said competitors of respondents who do not use the same or an equivalent or similar method. The use of said method by respondents has a tendency and capacity, because of said game or chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent or similar method, to exclude from said candy and nut confections trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful, to lessen competition in said candy and nut confections trades, to create a monopoly of said candy and nut confections trades in respondents and such other distributors of candy and nut confections as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in said candy and nut confections trades. The use of said method by respondents in the sale of their products has a tendency and capacity to eliminate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential com-

petitors who do not adopt and use said method or an equivalent or similar method.

PAR. 6. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 3, 1938, issued and thereafter served its complaint in this proceeding upon the respondents Consolidated Candy Co., Inc., a corporation, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 31, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 Consolidated Candy Co., Inc., is a corporation with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Individual respondent Leslie Finucane, is secretary and treasurer of said corporation and has his principal office at the same address as corporate respondent. Said individual respondent controls, formulates and directs the practices and policies of Consolidated Candy Co., Inc. Respondents act together and in cooperation with each other in doing the acts and things hereinafter found.

Respondents are now and for some time last past have been engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers. Respondents cause and have caused their products when sold, to be shipped or transported from the aforesaid principal place of business in Texas to purchasers thereof in the various other States of the United States and in the District of Colum-

bia, at their respective places of business. There is now and has been for some time last past a course of trade by said respondents in such candy and nut confections in commerce between and among the various States of the United States and in the District of Columbia. 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 candy and nut confections 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 and nut confections so packed and assembled so as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of bars of a nut confection or candy, together with a device commonly called a push card. The push card contains a number of partly perforated discs and on the face of each disc is printed the word "push." Within each of said discs is printed either the letter O or number 1, 2, or 3, and the persons pushing the disc containing the letter O receive bars of said nut confection or candy without cost, and the persons pushing the discs containing the number 1, 2, or 3, pay in cents the amount of the number pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until a push has been made and the discs separated or removed from said card. The fact as to whether a customer receives a bar of said nut confection or candy without charge, or the price to be paid therefor, is determined wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of candy and nut confections involving a lottery or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase assortments of respondents' candy or nut confections, 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 a means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of candy and nut confections to purchase respondents' said products in preference to candy and nut confections offered for sale and sold by their competitors.

PAR. 4. The sale of said candy or nut confections to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than the normal retail price thereof. The use by respondents of said method in the sale of candy and nut confections, and the sale of candy and nut confections by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondents of said method in the sale of their products has the 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 candy and nut confection trades 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 and nut confections in competition with the respondent, as above found, are unwilling to offer for sale and sell candy and nut confections 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 nut confections are attracted by respondents' said method and manner of packing said candy and nut confections 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 nut confections so packed and sold by respondents in preference to candy and nut confections offered for sale and sold by said competitors of respondents who do not use the same or an equivalent or similar method. 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 said competitors who do not use the same or an equivalent or similar method, to exclude from said candy and nut confections trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful, to lessen competition in said candy and nut confections trades, to create a monopoly of said candy and nut confections trades in respondents and such other distributors of candy and nut confections as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in

said candy and nut confections trades. The use of said method by respondents in the sale of their products has a tendency and capacity to eliminate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts 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 respondents, Consolidated Candy Co., Inc., a corporation, its officer, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., their respective representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy or other merchandise 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, assortments of candy or any other merchandise together with push or pull cards, punchboards, or other lottery devices or separately which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

3. Selling or otherwise disposing of candy or any other merchandise by use of push or pull cards, punchboards, or other lottery device.

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

MODEL LINGERIE COMPANY, AND GERTRUDE LEITH, INDIVIDUALLY AND AS AN OFFICER OF MODEL LINGERIE COMPANY

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

Docket 3659. Complaint, Dec. 7, 1938—Decision, Sept. 18, 1939

Where a corporation and an individual, who was secretary and treasurer thereof and controlled and directed its sales policies and general business practices, engaged in sale and distribution of hosiery in interstate commerce, in soliciting sale of and selling their said merchandise—

Furnished therewith push cards, together with plans for merchandising same, which involved operation of a game of chance, gift enterprise, or lottery scheme for distribution thereof to consuming public wholly by lot or chance, and under which and in accordance with card's legend persons selecting by chance from a large number of feminine names displayed that corresponding with name concealed under card's red seal received two pairs of ladies' silk hosiery, and person selecting feminine name concealed under card's blue seal received one pair thereof, and person securing certain announced number received "Ladies' Beautiful Scarf or Compact or Cigarette Case," and cost of chance, if any, to customer was determined by particular number, as announced, secured under disk pushed, and under which provision was made for sale, if desired, of men's hosiery and for "Surprise Gift" for person sending order, if within 10 days, and for compensating operator by two pairs of ladies' or six pairs of men's hosiery; and

Supplied thereby and placed in the hands of others means of conducting lotteries or games of chance in the distribution of their merchandise in accordance with aforesaid or similar sales plan, varying therefrom in detail only, but involving, in case of all, push cards for use in distribution of their product through games of chance, gift enterprises, or lottery schemes, and involving game of chance or sale of chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to the established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use such methods or any method involving game of chance or sale of a chance to win something by chance or by any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them in the sale and distribution of their said merchandise and element of chance involved therein and were thereby induced to buy such merchandise in preference to that offered and sold by their competitors aforesaid who did not use such or similar method, and with effect of diverting trade unfairly to them from their said competitors who do not use such or similar method, to the substantial injury of competition in commerce:

Held; That such acts and practices, under the circumstances set forth were, all to the injury and prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Model Lingerie Co., a corporation, and Gertrude Leith, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Model Lingerie Company, is a corporation organized and existing under the laws of Illinois, having its principal place of business located at 529 South Franklin Street, Chicago, Ill. Respondent, Gertrude Leith, is secretary and treasurer of, and is principal stockholder in, the respondent corporation. Said individual respondent has her principal place of business at the aforementioned address of the Model Lingerie Company and controls and directs the sales policies and general business practices of said corporate respondent herein described. The aforesaid corporation is now, and for some time 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.

Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in Illinois to purchasers thereof in the various States of the United States other than Illinois and 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 by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondents are now and for some time last past have been in competition with other individuals and other corporations and with partnerships engaged in the sale and distribution of like or 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 their business as described in paragraph 1 hereof respondents, in soliciting the sale of and in selling and distributing their merchandise in commerce herein described, furnish, and have 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the public through the United States mails and otherwise certain literature, instructions and sales outfits, including push cards, order blanks, and advertisements containing illustrations of hosiery, 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 cards. In order to secure additional representatives, respondents include with the aforesaid literature, instructions, sales outfits, advertising and push cards, three more sales cards for distribution among the representative's friends. If these friends in turn mail in order, the aforesaid representative will receive a pair of hosiery free for each of such orders made.

Respondents' push cards bear 60 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has sixty 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 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 SEAL NUMBERS BLUE SEAL
5–15–20
25–30–40
ARE FREE
SELECT YOUR FAVORITE NAME

LUCKY NAME UNDER RED SEAL
RECEIVES
TWO PAIRS
LADIES' SILK HOSIERY
LUCKY NAME UNDER BLUE SEAL
RECEIVES
ONE PAIR

LADIES' SILK HOSIERY
NO. 33 RECEIVES A LADIES' BEAUTIFUL
SCARF OR COMPACT OR CIGARETTE CASE

PAY ONLY WHAT YOU DRAW 1¢ TO 15¢
ANY NUMBER OVER 15 PAYS ONLY 15¢
NO CREDIT

NOTICE: If MEN'S HOSIERY are wanted we will send 3 Pair 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 the order

WRITE YOUR NAME OPPOSITE
NAME YOU SELECT ON REVERSE SIDE

Sales of 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 customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents furnish two pairs of ladies' hosiery or six pairs of men's hosiery to their representative making sales by means of said push card. Respondents also furnish their representatives with additional printed instructions or suggestions for using their push cards. Respondents distribute and have distributed various push cards for use in the sale of their said products by means of a game of chance, gift enterprise or lottery scheme, but all of said push cards are similar to the card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 the normal retail price thereof. Many persons, firms, and cor-

porations, who sell or distribute merchandise in competition with the respondents 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 said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise 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, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 7th day of December, A. D., 1938, issued its complaint and caused same to be served on Model Lingerie Co., a corporation, and Gertrude Leith, individually and as an officer of Model Lingerie Co., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Federal Trade Commission, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, which testimony was reduced to writing and filed in the office of the Commission, together with one piece of documentary evidence received as an exhibit. No testimony or other evidence was introduced on behalf of the respondents.

Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence and brief in support of the complaint. No brief was filed by or on behalf of the respondents, and oral argument was 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. For more than 1 year prior to the issuance of the complaint herein, said respondent Model Lingerie Co. was a corporation organized and existing 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 said State. Respondent, Gertrude Leith, is the secretary and treasurer of said corporation and controls and directs its sales policies and general business practices. Said respondents have been engaged in the sale and distribution of hosiery in interstate commerce. In the course and conduct of said business, respondents caused said merchandise, when sold, to be transported from their place of business in the city of Chicago, State of Illinois, into and through, or into, other States of the United States. Said respondents did a substantial volume of business and in the course and conduct of said business were in active competition with various individuals, partnerships and corporations engaged in the sale and distribution of like merchandise in commerce between and among several of the States of the United States.

PAR. 2. Respondents, in the course and conduct of their business as described in paragraph 1 hereof, in soliciting the sale of and selling their said merchandise, furnished in connection with such merchandise a device designated as a "push card," together with plans for merchandising their product which involved the operation of a game of chance, gift enterprise, or lottery scheme, by which such merchandise was distributed to the consuming public wholly by lot or chance. One such device furnished by respondents to be used by their customers in the resale of hosiery to the consuming public was a push card bearing 60 disks to be pushed, beneath each of which was a feminine name, and a list of said feminine names was printed on the reverse of said card, with a blank space opposite each of said names for entering the name of the purchaser of the "chance" or "push." Concealed within each of the aforementioned disks was a number, which was disclosed when the disk was pushed or separated from the card. Said push card also bore a large red partially perforated disk

and a large blue partially perforated disk; concealed within each of the two last mentioned disks was one of the feminine names appearing elsewhere on said card. The push card bore printed legends or instructions, as follows:

RED SEAL NUMBERS BLUE SEAL
5—15—20
25—30—40
ARE FREE
SELECT YOUR FAVORITE NAME

LUCKY NAME UNDER RED SEAL RECEIVES
TWO PAIRS LADIES' SILK HOSIERY
LUCKY NAME UNDER BLUE SEAL RECEIVES
ONE PAIR LADIES' SILK HOSIERY

No. 33 Receives a Ladies' Beautiful Scarf or
Compact or Cigarette Case

PAY ONLY WHAT YOU DRAW 1¢ TO 15¢
Any Number over 15 pays only 15¢
NO CREDIT

NOTICE: IF MEN'S HOSIERY are wanted we will send 3 Pair 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 the order

WRITE YOUR NAME OPPOSITE NAME
YOU SELECT ON REVERSE SIDE

The distribution of hosiery by means of said push cards was made in accordance with the above-stated legend or instructions, and the said articles of merchandise were thus distributed to the consumer customers wholly by lot or chance. Respondents furnished two pairs of ladies' hosiery, or six pairs of men's hosiery, to representatives who made sales by means of said push cards. Respondents distributed various push cards for use in the distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes, but all of such cards were of character similar to the one hereinabove described, and varied only in detail.

PAR. 3. The Commission finds that respondents, by use of the push cards, instructions and methods of distribution of their said merchandise, as described in paragraph 2 hereof, supplied and placed in the hands of others the means of conducting lotteries or games of chance in the distribution of respondents' merchandise in accordance with said sales plan. The use by respondents of said push cards and said sales plan or method, and the sale and distribution of said merchandise by and through the use thereof, is practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of the criminal law.

PAR. 4. The Commission finds that the sale of merchandise to the purchasing public in the manner above described 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 sold or distributed merchandise in competition with respondents were unwilling to adopt and use such methods, or any method involving a game of chance or the sale of a chance to win something by chance, or by any other method that is contrary to public policy; and such competitors refrained from said practices. Many persons were attracted by the sales plan or method employed by respondents in the sale and distribution of said merchandise and the element of chance involved therein, and were thereby induced to buy respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not use the same or a similar method. The use of said method by respondents, because of said element of chance, had the tendency and capacity to, and did, unfairly divert trade to respondents from their competitors who did not use the same or a similar method, and as a result thereof, substantial injury has been 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 acts and practices of the respondents, as hereinbefore found, are all to the injury and prejudice of the public and of competitors of respondents, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the provisions 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 (respondents having filed no answer), 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, brief filed herein by counsel for the Commission (respondents having offered no proof, filed no brief, and 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Model Lingerie Co., a corporation, its officers, and Gertrude Leith, individually and as an officer of

Model Lingerie Company, their respective representatives, agents, and employees directly or through any corporate or other device in connection with the offering for sale, sale and distribution of hosiery or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, 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 so as to enable such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

MORBEN HAT WORKS, INC., AND MORRIS S. ALTMAN

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

Docket 3838. Complaint, June 28, 1939—Decision, Sept. 18, 1939

Where a corporation and an individual, who was an officer thereof and principal stockholder therein, and managed, controlled, and dominated its affairs and activities, engaged in manufacture of hats from old, worn, and used felt hats purchased by them, and so treated and processed, through cleaning, steaming, ironing, and shaping and, in some instances, fitting same with new trimmings, sweat bands, and size labels, that they had the appearance of new products made from felts which had never been worn—

Sold said products, with appearance aforesaid, and with no label, marking, or designation stamped thereon to indicate to purchasing public that they were made from old, worn, and previously used felt hat bodies which had been cleaned and renovated by them, to jobbers, wholesalers, and retailers who sold, as buyers direct or from said jobbers and wholesalers, to purchasing public said products, without disclosing fact that such hats were made as aforesaid, and under such circumstances as to indicate that they were in fact new hats;

With effect of misleading and deceiving substantial number of wholesalers, jobbers, retailers, and members of purchasing public into erroneous and mistaken beliefs that said products were made from either new and unused materials or from new, but shopworn hat bodies, cleaned, steamed, and renovated by manufacturers thereof in manner similar to that employed in connection with those made from old, worn, and previously used felt bodies, and into purchase of substantial number of such hats because of said erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.
Mr. Robert Mathis, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Morben Hat Works, Inc., a corporation, and Morris S. Altman, individually and as an officer of said Morben Hat Works, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof

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

PARAGRAPH 1. Respondent, Morben Hat Works, Inc., is now and has been at all times mentioned herein, a corporation, existing and doing business under and by virtue of the laws of the State of New York. Respondent Morris S. Altman is an individual and an officer and the principal stockholder of respondent Morben Hat Works, Inc., and as such manages, controls and dominates its corporate affairs and activities. All of said respondents have their office and principal place of business at 162 Green Street, in the city and State of New York. Respondents are now, and for more than 1 year last past have been engaged in the business of manufacturing hats from felts and other materials obtained from old, worn and previously used hats and of selling the same to retailers, jobbers, and wholesalers located in the various States of the United States and in the District of Columbia. Respondents cause, and at all times herein mentioned have caused, such hats to be transported from their place of business in the city and state of New York to the aforesaid purchasers thereof, at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. In the course and conduct of said business, described in paragraph 1 hereof, respondents buy old, worn, and used felt hats. The old, worn, and used felt hats are cleaned, steamed, ironed, and shaped by respondents and then in some instances are fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers who, in turn sell said products to the purchasing public.

PAR. 3. The aforesaid, old, worn, and previously used hat bodies, after having been cleaned and renovated by respondents as described in paragraph 2 hereof, have the appearance of new hats manufactured from felts which have never been worn, and said hats are sold by respondents to retailers, and to jobbers and wholesale dealers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats are manufactured from old, worn, and previously used felt hat bodies, which have been cleaned and renovated by respondents. Said hats are sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers, who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts, previously worn, and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies, and from new felt hat bodies, obtained from new but shop-worn hats, as well as from newly manufactured felt. Shop-worn hats are new hats which are reclaimed from merchants' shelves by said hat manufacturers, and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used felt hat bodies.

PAR. 4. The use by respondents of the acts and practices, above set forth, has the capacity and tendency to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from either new and unused materials, or are made from new but shop-worn hat bodies, and into the purchase of a substantial number of said hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 28th day of June, A. D. 1939, issued and served its complaint in this proceeding upon the respondents, Morben Hat Works, Inc., a corporation, and Morris S. Altman, individually and as an officer of Morben Hat Works, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 23, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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, Morben Hat Works, Inc., is now and has been at all times mentioned herein, a corporation, existing and

doing business under and by virtue of the laws of the State of New York. Respondent Morris S. Altman is an individual and an officer and the principal stockholder of respondent Morben Hat Works, Inc., and as such manages, controls, and dominates its corporate affairs and activities. All of said respondents have their office and principal place of business at 162 Green Street, in the city and State of New York. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats and of selling the same to retailers, jobbers, and wholesalers located in the various States of the United States and in the District of Columbia. Respondents cause, and at all times herein mentioned have caused, such hats to be transported from their place of business in the city and State of New York to the aforesaid purchasers thereof, at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. In the course and conduct of said business, described in paragraph 1 hereof, respondents buy old, worn, and used felt hats. The old, worn, and used felt hats are cleaned, steamed, ironed, and shaped by respondent and then in some instances are fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers who, in turn, sell said products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been cleaned and renovated by respondents as described in paragraph 2 hereof, have the appearance of new hats manufactured from felts which have never been worn, and said hats are sold by respondents to retailers, and to jobbers and wholesale dealers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats are manufactured from old, worn, and previously used felt hat bodies, which have been cleaned and renovated by respondents. Said hats are sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers, who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts, previously worn, and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies, and from new felt hat bodies, obtained from new but shop-worn hats, as well as from newly manufactured felt. Shop-worn hats are new hats which are reclaimed from merchants' shelves by said hat manufacturers, and which have never been worn or used. Said shop-worn hats are

cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used felt hat bodies.

PAR. 4. The use by respondents of the acts and practices, above set forth, has the capacity and tendency to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from either new and unused materials, or are made from new but shop-worn hat bodies, and into the purchase of a substantial number of said hats because of such erroneous and mistaken beliefs.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in the said complaint and state that they waive all intervening procedure and further hearing as to said facts, 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 Morben Hat Works, Inc., a corporation, its officers, representatives, agents, and employees, and respondent Morris S. Altman, individually and as an officer of said corporation, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of hats in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating said sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies

of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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.

IN THE MATTER OF

ROBERT C. OBERLIN, TRADING AS RESEARCH PRODUCTS CO.

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

Docket 3863. Complaint, Aug. 5, 1939—Decision, Sept. 18, 1939

Where an individual engaged in sale and distribution of various medicinal preparations to purchasers in various other States and in the District of Columbia; in advertisements which he disseminated through the mails, through newspapers, and periodicals of general circulation, and through circulars and other printed or written matter distributed among the various States, and through various other means, and which were intended and likely to induce purchase of his preparations—

(*a*) Represented, as aforeesaid, that certain preparations thus offered, but not actually sold, and known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Double Strength Pills," constituted cures or remedies for delayed menstruation and competent and effective treatments therefor, and that said preparations were safe and harmless, facts being they were not cures or remedies for said condition, did not constitute competent or effective treatments therefor, and were not safe and harmless, in that they contained extract cotton root bark, extract black hellebore, oil tansy, powdered aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken as prescribed in said advertisements or under such conditions as are customary or usual;

(*b*) Failed to reveal, in advertisements disseminated with respect thereto, that use of said preparations, under conditions prescribed in said advertisements or under conditions such as are customary or usual, might result in serious or irreparable injury to health;

(*c*) Represented that his medicinal preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules" was a cure or remedy for and had therapeutic value in treatment of rheumatism, sleeplessness, nervousness, or pains in the back, and would serve to flush poisons out of the kidneys or bladder, facts being it was not a competent and effective remedy for any of said ailments or conditions or competent or effective treatment therefor, and would not accomplish results claimed as above set forth; and

(*d*) Represented that use of his preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E Perles" was a competent or effective remedy or cure for, and had therapeutic value in the treatment of the conditions known as lack of ambition, loss of strength, loss of blood or anemia, or run-down condition, facts being it was not a competent or effective remedy for any of said ailments, had no potency as such tonic or stimulant, and was not a cure or remedy for various conditions above set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and to induce substantial

portion of said public, because of such belief, to purchase his said preparations:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. W. L. Pack for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Robert C. Oberlin, an individual trading as Research Products Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert C. Oberlin, is an individual trading under the name of Research Products Co. with his office and principal place of business at 3170 Berkshire Road, Cleveland Heights, Ohio. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said medicinal 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 aforesaid business the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce directly or indirectly the purchase of said preparations; and has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said preparations by various

means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation known as Dupree Pills, Dupree Double Strength Pills, and Dr. Gordon's Special Formula Double Strength Pills. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid with respect to said preparations known as Dupree Pills, Dupree Double Strength Pills, and Dr. Gordon's Special Formula Double Strength Pills are the following:

Ladies end delay. Speedy results in overdue, difficult, abnormal delays. Regular package $2.00. Double strength $3.00. Super-double strength $4.00. Research Products Co., Box 3522, Cleveland Heights, Ohio.

Ladies delayed—remarkably speedy action overdue abnormal delays. Satisfaction or money back. $1.00. Research Products, Box 3522, Cleveland, Ohio.

While the aforesaid medicinal preparations are not specifically named in said advertisements the preparations so advertised are in fact the preparations known as Dupree Pills and Dupree Double Strength Pills and Dr. Gordon's Special Formula Double Strength Pills.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his said medicinal preparations known as Dupree Pills and Dupree Double Strength Pills and Dr. Gordon's Special Formula Double Strength Pills are cures or remedies for delayed menstruation and competent and effective treatments therefor and that said preparations are safe and harmless.

PAR. 5. In truth and in fact said preparations are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Moreover, said preparations are not safe and harmless, in that they contain extract cotton root bark, extract black hellebore, oil tansy, powdered aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken as prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where any of said preparations are used to interfere with the normal course

of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparations under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious or irreparable injury to health.

PAR. 7. Another of the medicinal preparations advertised, sold, and distributed by the respondent as aforesaid is a certain preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules." Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated by respondent with respect to said preparations are the following:

Prostate Kidney Bladder and Rheumatism Sufferers.—Remarkably prompt action for your disorders by our Improved Special. Low cost. Send for free sample of our Improved Special. Research Products Co. Box 3522, Cleveland, Ohio.

Kidney Bladder Rheumatism Sufferers.—Are you worried with sleeplessness, nervousness, gland weakness and prostate trouble. Getting up nights. Pain in back. Learn how to flush poisons out of kidney, bladder, etc. Send for copy "Amazing News" free. Research Products Co., Box 3522, Cleveland, Ohio.

While the said preparation is not specifically named in the foregoing advertisements, the preparation so advertised is in fact the preparation known as Van Dyke Dutch Brand Haarlem Oil Capsules.

PAR. 8. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his said medicinal preparation known as Van Dyke Dutch Brand Haarlem Oil Capsules is a cure or remedy for prostate, kidney, and bladder ailments, and for rheumatism, sleeplessness, nervousness, gland weakness, pains in the back, and a competent and effective treatment therefor. Respondent also represents

that said preparation is an effective means of flushing poisons out of the kidney and bladder.

PAR. 9. In truth and in fact, said preparation is not a competent and effective remedy for any of said ailments. Its use will not serve to remedy any ailments of the prostate gland or the kidneys or bladder, nor is said preparation a cure or remedy for rheumatism or for sleeplessness, nervousness or pains in back, and is not a competent or effective treatment therefor, nor will the use of said preparation serve to flush poisons out of the kidney or bladder.

PAR. 10. A further medicinal preparation advertised, sold and distributed by respondent as aforesaid is a certain preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E. Perles." Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated by respondent with respect to said preparation are the following:

Vitamin E. Perles. A potent tonic and nerve stimulant for male and female. Month's supply $1. Research Products Co., Box 3522, Cleveland Heights, Ohio.

Dr. Gordon's Vitam-Perles. Pure cold-pressed wheat embryo oil rich in Vitamin E. Indications: lack of ambition, loss of strength, lack of blood or anemia and rundown condition.

PAR. 11. By the use of said representations and other representations similar thereto, not specifically set out herein, respondent represents that his said preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E Perles" is a potent tonic and nerve stimulant for male and female and that said preparation is a remedy or cure for lack of ambition, loss of strength, lack of blood or anemia, and run-down condition.

In truth and in fact, said preparation is not a competent or effective remedy for any of said ailments. It has no potency as a tonic or nerve stimulant for either male or female, nor is it a cure or remedy for lack of ambition, loss of strength, loss of blood or anemia, or run-down condition.

PAR. 12. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid 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 and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

PAR. 13. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 1939, issued and on August 8, 1939, served its complaint in this proceeding upon respondent Robert C. Oberlin, trading as Research Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 25, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, except an allegation as to the sale of certain products hereinafter referred to in paragraph 3, and waived all intervening procedure and further hearing as to said facts. Thereafter the 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 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, Robert C. Oberlin, is an individual trading under the name of Research Products Co., with his office and principal place of business at 3170 Berkshire Road, Cleveland, Ohio. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States, and in the District of Columbia. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States, and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said medicinal 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 aforesaid business the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions

in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations; and has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Among said medicinal preparations are certain preparations for the relief of delayed menstruation known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Double Strength Pills." Respondent has not made any actual sales of these preparations. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid with respect to said preparations known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Double Strength Pills" are the following:

Ladies end delay. Speedy results in overdue, difficult, abnormal delays. Regular package $2.00. Double Strength $3.00. Super-double strength $4.00. Research Products Co., Box 3522, Cleveland Heights, Ohio.

Ladies delayed—remarkably speedy action overdue abnormal delays. Satisfaction or money back. $1.00. Research Products, Box 3522, Cleveland, Ohio.

While the aforesaid medicinal preparations are not specifically named in said advertisements, the preparations so advertised are in fact the preparations known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Dougle Strength Pills."

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his said medicinal preparations known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Double Strength Pills" are cures or remedies for delayed menstruation and competent and effective treatments therefor, and that said preparations are safe and harmless.

PAR. 5. In truth and in fact said preparations are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Moreover, said preparations are not safe and harmless, in that they contain extract cotton root bark, extract black hellebore, oil tansy, powdered aloes, oil savin, and ergotin

in quantities sufficient to cause serious and irreparable injury to health if taken as prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where any of said preparations are used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparations under conditions prescribed in said advertisements or under such conditions as are customary of usual may result in serious or irreparable injury to health.

PAR. 7. Another of the medicinal preparations advertised, sold, and distributed by the respondent as aforesaid, is a certain preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules." Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated by respondent with respect to said preparation are the following:

Prostate Kidney Bladder and Rheumatism Sufferers.—Remarkably prompt action for your disorders by our Improved Special. Low cost. Send for free sample of our Improved Special. Research Products Co., Box. 3522, Cleveland, Ohio.

Kidney Bladder Rheumatism Sufferers.—Are you worried with sleeplessness, nervousness, gland weakness and prostate trouble. Getting up nights. Pain in back. Learn how to flush poisons out of kidney, bladder, etc. Send for copy "Amazing News" free. Research Products Co., Box 3522, Cleveland, Ohio.

While the said preparation is not specifically named in the foregoing advertisements, the preparation so advertised is in fact the preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules."

PAR. 8. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his said medicinal preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules" is a cure or remedy for prostate, kidney, and bladder ailments, and for rheumatism, sleeplessness, nervousness, gland weakness, pains in the back, and a competent and effective treatment therefor. Respondent also represents that said preparation is an effective means of flushing poisons out of the kidneys and bladder.

PAR. 9. In truth and in fact, said preparation is not a competent and effective remedy for any of said ailments. Its use will not serve to remedy any ailments of the prostate gland or the kidneys or bladder, nor is said preparation a cure or remedy for rheumatism or for sleeplessness, nervousness or pains in the back, and is not a competent or effective treatment therefor, nor will the use of said preparation serve to flush poisons out of the kidneys or bladder.

PAR. 10. A further medicinal preparation advertised, sold, and distributed by respondent as aforesaid is a certain preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E. Perles." Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated by respondent with respect to said preparation are the following:

Vitamin E. Perles. A potent tonic and nerve stimulant for male and female. Month's supply $1. Research Products Co., Box 3522, Cleveland Heights, Ohio.

Dr. Gordon's Vitam-Perles. Pure cold-pressed wheat embryo oil rich in Vitamin E. Indications: Lack of ambition, loss of strength, lack of blood or anemia and rundown condition.

PAR. 11. By the use of said representations and other representations similar thereto, not specifically set out herein, respondent represents that his said preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E. Perles" is a potent tonic and nerve stimulant for male and female and that said preparation is a remedy or cure for lack of ambition, loss of strength, lack of blood or anemia, and run-down condition.

In truth and in fact, said preparation is not a competent or effective remedy for any of said ailments. It has no potency as a tonic or nerve stimulant for either male or female, nor is it a cure or remedy for lack of ambition, loss of strength, loss of blood or anemia, or run-down condition.

PAR. 12. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid 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 and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, except an allegation as to the sale of certain products, and states that he waives all intervening procedure and further hearing as to said facts, 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, Robert C. Oberlin, an individual trading as Research Products Co., his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations now designated by the name of "Dupree Pills," "Dupree Double Strength Pills," "Dr. Gordon's Special Formula Double Strength Pills," "Van Dyke Dutch Brand Haarlem Oil Capsules," "Dr. Gordon's Vitam-Perles," and "Vitamin E. Perles," or any other medicinal preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisements represent, directly or through implication.

1. That the use of said preparations known as "Dupree Pills," "Dupree Double Strength Pills," and "Dr. Gordon's Special Formula Double Strength Pills" is a competent, safe, and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of such preparations may result in serious and irreparable injury to the health of the user.

2. That the use of the preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules" is a cure or remedy for or has any therapeutic value in the treatment of rheumatism, sleeplessness, nervousness, or pains in the back, or that the use of said preparation will serve to flush poisons out of the kidneys or bladder.

3. That the use of the preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E. Perles" is a competent or effective remedy or cure for, or that it has any therapeutic value in the treatment of the conditions known as lack of ambition, loss of strength, loss of blood or anemia, or run-down condition.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and if so, the manner and form in which he intends to comply; and that within 60 days after the service upon him of this order said respondent shall 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

JOSEPH A. VILLONE, TRADING AS EXCELSIOR HAT WORKS

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

Docket 2046. Complaint, Aug. 4, 1939[1]*—Decision, Sept. 19, 1939*

Where an individual engaged in manufacture of hats from old, worn, and used felt hat bodies purchased by him and so treated and processed, through cleaning, steaming, ironing, and shaping, and fitting same with new trimmings, sweat bands, and size labels, that they had the appearance of new products made from felts which had never been worn or used—

Sold said hats, with appearance aforesaid, and with no label, marking, or designation stamped thereon to indicate to purchasing public that they were in fact made from old, worn, and previously used bodies, cleaned and renovated as above set forth, to jobbers, wholesalers, and retailers, who resold said articles to purchasing public without disclosing facts aforesaid, and under such circumstances as to indicate that they were in fact new, and failed, through use of words "Made Over Hat," under such terms as "De Luxe Quality" or "Style Distinctive" or similar words, to disclose to purchasers that articles in question were made from old, worn, or previously used bodies, as distinguished from products made from shop-worn bodies, or newly manufactured felts, which had never been worn or used;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said products were made from new and unused material or from new, but shop-worn, hat bodies which had never been worn or used, and into purchase of substantial number thereof because of such erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr. for the Commission.

Mr. Louis R. Kagan, of Jersey City, N. J., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Joseph A. Villone, an individual trading as Excelsior Hat Works, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof

[1] Amended and supplemental.

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

PARAGRAPH 1. Respondent Joseph A. Villone is an individual trading as Excelsior Hat Works, with his office and principal place of business located at 275 Fifteenth Street, Jersey City, N. J. Respondent is now and for more than 1 year last past has been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats, and of selling the same to jobbers, wholesale dealers, and retailers in various States of the United States and in the District of Columbia. Respondent causes and at all times herein mentioned has caused such hats to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of said business described in paragraph 1 hereof, the respondent buys old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then fitted with new trimmings, sweat bands, size labels, and sold by respondent to retailers, jobbers, and wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made by respondent into hats with new trimmings, sweat bands, and size labels, as described in paragraph 2 hereof, have the appearance of new hats, manufactured from felts which have never been worn or used and said hats are sold by respondent to retailers, and to jobbers and wholesalers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used felt hat bodies which have been cleaned and renovated by respondent. Said hats are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts which have been previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course and operation of his business respondent uses the words "Style Distinctive," "Style Felt Hats," "De Luxe Quality," and other similar words or names in designating said merchandise. Respondent causes said words or other similar words or names to be embossed on sweat bands which are attached to said hats. Immedi-

ately under the words "Style Distinctive," "Style Felt Hats," and "De Luxe Quality," or under similar terms and names used by respondent in designating said hats, respondent has caused to be embossed the words "Made Over Hat."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used felt hat bodies, and from new felt hat bodies obtained from new but shop-worn hats as well as from newly manufactured felt. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid and the failure to use words or wording clearly indicating that the said hats are made from old, worn, and previously used felt hat bodies, respondent fails to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondent of the acts and practices, above set forth, has the capacity to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from new and unused materials or are made from new but shop-worn hat bodies which have never been worn and used, and into the purchase of a substantial number of such hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 August 1939, issued and served its amended and supplemental complaint in this proceeding upon said respondent, Joseph A. Villone, an individual trading as Excelsior Hat Works, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 22nd day of August 1939, the respondent filed his 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 and his counsel, Louis R. Kagan, 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 amended and supplemental complaint, or in opposition thereto, and that the said Commission may proceed upon such 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 proceedings 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, accepted, and filed, 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 Joseph A. Villone is an individual trading as Excelsior Hat Works, with his office and principal place of business located at 275 Fifteenth Street, Jersey City, N. J. Respondent is now and for more than 1 year last past has been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats, and of selling the same to jobbers, wholesale dealers, and retailers in various States of the United States and in the District of Columbia. Respondent causes, and at all times herein mentioned has caused, such hats to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of said business described in paragraph 1 hereof, the respondent buys old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then fitted with new trimmings, sweat bands, size labels, and sold by respondent to retailers, jobbers, and wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made by respondent into hats with new trimmings, sweat bands, and size labels, as described in paragraph 2 hereof, have the appearance of new hats, manufactured from felts which have never been worn or used and said hats are sold by respondent to retailers, and to jobbers and wholesalers without any label, marking,

or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used felt hat bodies which have been cleaned and renovated by respondent. Said hats are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts which have been previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course and operation of his business respondent uses the words "Style Distinctive," "Style Felt Hats," "De Luxe Quality," and other similar words or names in designating said merchandise. Respondent causes said words or other similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Style Distinctive," "Style Felt Hats," and "De Luxe Quality," or under similar terms and names used by respondent in designating said hats, respondent has caused to be embossed the words "Made Over Hat."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used felt hat bodies, and from new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured felt. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid and the failure to use words or wording clearly indicating that the said hats are made from old, worn, and previously used felt hat bodies, respondent fails to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondent of the acts and practices above set forth has the capacity to, and does, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from new and unused material or are made from new but shop-worn hat bodies which have never been worn or used, and into the purchase of a substantial number of such hats because of such erroneous and mistaken beliefs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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, the answer of the respondent, and a stipulation as to the 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, Joseph A. Villone, individually, and trading as Excelsior Hat Works, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

KIDDER OIL COMPANY

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

Docket 3026. Complaint, Dec. 30, 1936—Decision, Sept. 19, 1939

Where a corporation engaged in preparation, sale, and distribution of certain packaged lubricant which it designated as "Koatsal," and ingredients of which were lubricating oil and colloidal graphite, and which was recommended for use in fuels and crankcase oils for automobile and aeroplane engines; in advertising its said product through pamphlets, letters, post cards, testimonials, and other advertising matter distributed to members of purchasing public in various States and furnished to customers for such distribution, and through periodicals of general circulation—

(*a*) Represented that an individual, whose name it bore, was an original pioneer in the blending of colloidal graphite and lubricating oil and had great scientific knowledge which enabled him to develop said product, facts being many were engaged in selling colloidal graphite and lubricating-oil mixtures similar to such said "Koatsal," long prior to entry into field of lubrication of said individual, who merely compounded said preparation by using well-known formula furnished by corporate seller of product, composed of 10 percent colloidal graphite and 90 percent lubricating oil;

(*b*) Represented that said "Koatsal" penetrated and adhered to all metal surfaces which it reached, and that it permeated the pores of the metal and soaked into it, and that metal became plated with it and moving part rode on such plating; and

(*c*) Represented, as aforesaid, that said "Koatsal" reduced friction and provided perfect protection against burned-out bearings, and made metal self-lubricating, and improved operation of a motor, and that automobile lubricated therewith would run further distance without oil in crankcase, without damage to any part, than could automobile lubricated with oil thus run;

Facts being that while oil and graphite were for many years the most generally used lubricants, and valuable ones, applied in proper place, viscosity and other properties and qualities of a film of lubricant are unaffected by presence of colloidal graphite as in said preparation, regardless of whether motor is operated under full-film or boundary conditions, said preparation has same properties as oil contained therein and no more, and effect of said preparation upon metal surfaces of a bearing is same effect as produced by said oil therein contained, and no more, no reduction of friction is accomplished by conditioning motor with said "Koatsal," and such conditioning, granted ample supply of oil, results in no measurable effect on friction, power or economy thereof, and bearing will run without substantial damage for indefinite period after oil is drained from crankcase, provided film of oil is maintained between moving and stationary surfaces, irrespective of whether such bearing was conditioned with "Koatsal" or not, and such a bearing is quickly destroyed, irrespective of whether previously

conditioned with said preparation, when said film is removed and boundary conditions exist; and

(*d*) Represented that its distributors, agents, salesmen, and demonstrators earned large sums of money by purchasing said preparation from it and selling same to public, facts being amounts earned by such salesmen, etc., in said purchase and resale were insignificant;

With tendency and capacity to mislead and deceive substantial portion of purchasing public with regard to value, efficacy, and effect of preparation aforesaid, and with result, as direct consequence of such deceptive acts and representations and such beliefs thus induced, that said public purchased said product and trade was unfairly diverted to it from competitors engaged in distribution and sale of products designed for similar usage, and who truthfully advertise and represent the properties, capacities, and effects of their respective products and results that may be expected to be obtained from purchase or use thereof:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy and *Mr. R. A. McOuat* for the Commission.

Franchot, *Runals*, *Cohen*, *Taylor & Rickert*, of Niagara Falls, 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 Kidder Oil Co., a corporation, has been, and is, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. The respondent, Kidder Oil Co., is a corporation organized, existing, and doing business under the laws of the State of Wisconsin, with its principal place of business at 818 South Third Street, La Crosse, Wis. Respondent, for more than 1 year last past, has been engaged in the manufacture for sale and sale of a product sold by it under the trade name of "Koatsal" in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes said product, when sold, to be shipped from its place of business in the State of Wisconsin, or other State of origin of said shipment, to purchasers thereof located in various States of the United States other than the State of Wisconsin or other than

the State of origin of the shipment. Respondent has at all times named herein maintained a constant current of trade and commerce in its said product, "Koatsal," between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent has been, for more than 1 year last past, and is now engaged in competition with other corporations, individuals, associations, and partnerships engaged in the manufacture for sale, 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. 3. In the course and conduct of its said business, as hereinabove described, respondent, in soliciting the sale of, and in selling its product, "Koatsal," by pamphlets, labels attached to containers of the product, letters, post cards, testimonials, advertisements inserted in newspapers, periodicals, and magazines, and otherwise, has made extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of its said product and the results that are achieved by using it, among which are the following:

(*a*) That Joseph K. Kidder, respondent's president, has great scientific knowledge which he has brought into play in perfecting "Koatsal," and that he is an original pioneer in this new field of lubrication.

(*b*) That "Koatsal" performs amazing feats of lubrication never before possible and utterly impossible by any other method, that it perfects lubrication and is more efficient than any other method because it is scientifically correct.

(*c*) That "Koatsal" reduces vibration in aeroplane motors to a remarkable degree.

(*d*) That "Koatsal" penetrates and adheres to all metal surfaces it reaches, "actually becomes a part of the metal, permeating the pores * * * literally 'soaking' into it," that the metal becomes plated with it and that moving parts ride on this plating.

(*e*) That "Koatsal" reduces friction as much as 50%, provides perfect protection against burned out bearings, and makes metal self-lubricating.

(*f*) That an automobile conditioned with "Koatsal" can run an amazing distance without oil in the crankcase without damage to any part.

(*g*) That respondent's distributors, agents, salesmen and demonstrators make 230% maximum profit and up to $35 to $40 daily.

PAR. 4. In truth and in fact respondent's representations, and each

of them, as set forth in paragraph 3 hereof, and respondent's advertisements and representations in pamphlets, circulars, labels attached to containers of the product, letters, post cards, testimonials, advertisements inserted in newspapers, periodicals, and magazines, and otherwise, are extravagant, deceptive, misleading, and false in the following respects:

Joseph K. Kidder, respondent's president, does not possess great scientific knowledge and is not an original pioneer in the field of lubrication for which respondent represents its product to be efficacious. "Koatsal" does not perform amazing feats of lubrication never before possible, and utterly impossible by any other method, nor does its use perfect lubrication, nor is the method of its use more efficient than any other method because it is scientifically correct, or for any other reason. The use of "Koatsal" in airplane motors does not reduce vibration in them to a remarkable, or any substantial, degree. "Koatsal" does not penetrate the metal surfaces it reaches, does not become a part of the metal, nor does it soak into the metal. The metal reached by "Koatsal" does not become plated with it, permitting moving parts to ride on this plating. The use of "Koatsal" does not reduce friction as much as 50 percent, nor to any extent approximating that percentage, it does not provide perfect protection against burned-out bearings, nor does it make metal self-lubricating. An automobile conditioned with "Koatsal" cannot run an amazing distance without oil in its crankcase without damage to any part of said automobile. Respondent's distributors, agents, salesmen, and demonstrators do not make 230 percent maximum profit and up to $35 to $40 daily, nor do they achieve any comparable rewards.

PAR. 5. Respondent's advertising and representations hereinabove described have had, and still have, the tendency and capacity to mislead and deceive the purchasing public regarding the value, efficacy, and effect of "Koatsal." As a direct consequence of the deceptive acts and representations of the respondent, and the erroneous and mistaken beliefs induced by said acts as herein set-out, the purchasing public has purchased respondent's "Koatsal" with the result that trade has been unfairly diverted to the respondent from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties, capacities, 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 respondent to commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth have been, and are, to the injury and prejudice of the public and the competitors of the respondent in interstate commerce, and have constituted, and now 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 the 30th day of December 1936, issued and served its complaint in this proceeding upon the respondent, Kidder Oil Co. charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph K. Kidder, respondent's president, 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, on May 14, 1938, the Commission ordered the case reopened for the taking of further testimony. Accordingly, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission and in opposition to the allegations of the complaint by E. E. Franchot, attorney for 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel immediately 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Kidder Oil Co., is a corporation organized and doing business under the laws of the State of Wisconsin. Its principal place of business is at 818 South Third Street,

La Crosse, Wis. Respondent is now, and for more than 1 year last past has been, engaged in the business of preparing, selling, and distributing in commerce a certain packaged lubricant designated as "Koatsal." The ingredients of "Koatsal" are lubricating oil and colloidal graphite.

PAR. 2. Respondent causes its product when sold to be transported from its place of business in La Crosse, in the State of Wisconsin, to purchasers thereof located at various points in other States of the United States. Respondent has maintained and does now maintain a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent in the course of its said business is in competition with other corporations and with individuals and firms also engaged in the business of preparing, selling, and distributing lubricants and other products intended and sold for the same purposes for which respondent's product is sold, in commerce between and among various States of the United States.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals, firms, and corporations to purchase said packaged lubricant, the respondent has made use of pamphlets, labels attached to the containers of its product, letters, post cards, testimonials, and other advertising literature, some of which it distributes to members of the purchasing public located in the various States of the United States, and some of which it furnishes to its customers to be placed by them in the hands of members of the purchasing public. It has also made use of advertisements inserted in magazines having a general circulation throughout the various States of the United States. In all said advertising matter respondent has caused its corporate name to be prominently and conspicuously displayed in connection with the trade name of its product, "Koatsal," together with the following statements:

Joseph K. Kidder, a pioneer in this field of improved lubrication, has brought into play his great scientific knowledge and years of experience and research and offers a Vastly Superior and Perfected product called Koatsal. Koatsal performs amazing feats of lubrication that were never before possible.

Koatsal is Friction's Greatest Foe.

The vibration is reduced in Koatsal conditioned aeroplane motors to a remarkable degree.

The heat and pressure exerted inside the motor make Koatsal penetrate and adhere to all metal surfaces it reaches. It actually becomes a part of the metal, permeating the pores . . . literally "soaking" into it. The metal really becomes "plated" with a satin-like heat-resisting film of great durability and marvelous lubricating efficiency.

The moving surfaces of the motor are actually kept apart from each other. They don't touch but "ride" on a durable surface, or plating of this super-lubricant. As a result friction is reduced as much as 50%.

* * * Bearings are protected from overheating.

Koatsal provides perfect protection against burned out bearings.

Now Auto Engines Run Without Oil.

Imagine an automobile * * * without a drop of oil in the crank case * * * running at normal speeds for 25 miles and even far greater distances * * * with absolutely no injury to Bearings, Piston Pins, Rings, Cylinder Walls or other parts! Don't say "Impossible!" It Can be done * * * it has been done. It has been repeatedly demonstrated that motors conditioned with this type of lubrication can actually operate without any injury to bearings or frictional parts for unbelievable lengths of time, even after all oil has been drained.

Through the use of said statements and other statements of similar import and meaning used in its advertising, respondent represents directly or by implication that Joseph K. Kidder has great scientific knowledge which he employed in developing "Koatsal," and that he is an original pioneer in blending colloidal graphite with oil; that "Koatsal" perfects lubrication and performs amazing feats of lubrication never before possible, and impossible by any other method; that "Koatsal" reduces vibration in airplane and automobile motors to a remarkable degree; that "Koatsal" penetrates and adheres to all metal surfaces that it reaches, penetrates and soaks into the pores of the metal, plates the metal surfaces, and that moving parts ride on this plating; that "Koatsal" reduces friction, provides perfect protection against burned-out bearings, and makes metal self-lubricating and improves the operation of a motor; that an automobile lubricated with "Koatsal" can run a further distance without oil in the crankcase without damage to any part than an automobile lubricated with oil can run without oil in the crankcase; that respondent's distributors, agents, salesmen, and demonstrators, earn large sums of money by purchasing "Koatsal" from the respondent and selling it to the public.

PAR. 5. In truth and in fact many other persons were engaged in selling colloidal graphite and lubricating oil mixtures similar to "Koatsal" long prior to Joseph K. Kidder's entry into this field of lubrication. He merely compounded "Koatsal" by using a well-known formula furnished by Acheson Colloids Corporation. Respondent's product, "Koatsal," is a solution of oil and colloidal graphite, recommended by respondent for use in fuels and crankcase oils for automobile and airplane engines. The graphite used in respondent's product is manufactured by Acheson Colloids Corporation of Port Huron, Michigan, which sells to respondent a product called

concentrated "Oildag," which is 10 percent colloidal graphite and 90 percent lubricating oil. Respondent blends one part of concentrated "Oildag" with fifty parts of lubricating oil to make "Koatsal." Acheson Colloids Corporation formerly made a product called "Ready for Use Oildag," which contained 1 part of concentrated "Oildag" to 50 parts of lubricating oil. "Ready for Use Oildag" so prepared by Acheson Colloids Corporation for sale to the public before 1930 was substantially the same product as "Koatsal," first introduced by Joseph K. Kidder in 1935.

"Koatsal" is prepared by the respondent and sold under two different labels. Type "U" "Koatsal" is intended for upper cylinder lubrication. Respondent recommends one ounce of Type "U" "Koatsal" for addition to five gallons of gasoline in the fuel tank. Type "C" "Koatsal" is intended for use in the crankcase and respondent recommends that two ounces of Type "C" "Koatsal" be mixed with each quart of oil in the crankcase. In either case, for quicker results, respondent recommends that the dosage be increased. Respondent claims that the effects and benefits to lubrication of a motor which it asserts come from the use of its product, are due solely to the presence of coloidal graphite which is blended with the oil to form "Koatsal."

For many years oil and graphite have been the most generally used lubricants. Each is a valuable lubricant when applied in the proper place. Oil alone has been the popular lubricant for airplane and automobile engines and does result in reducing friction.

The primary function of any lubricant in airplane and automobile motors is to reduce friction. Friction is waste work and is reduced by the forming of a film of lubricant between the stationary and moving parts of a bearing, holding them apart. There is practically no contact of metal to metal when a full film of lubricant is maintained between the moving and stationary surfaces. However, within this lubricating film particles next to the moving surface are in motion and those next to the stationary surface are stationary so that there must be a constant shearing of the film, which action transforms work into heat. Twice in each revolution, each piston pauses momentarily as it reverses direction. During the pause the tension in the rings tends to force out any lubricant between rings and the cylinder walls. In any automobile or airplane motor, even when running under full film conditions, there is a momentary shearing of the film.

When an automobile is given a fresh charge of lubrication, the film is as full as it is possible to maintain between the metal surfaces. This is called full film lubrication. As the lubricant is consumed and only a thin film exists, boundary conditions are approached. Boundary condition is that stage of lubrication when the film is negligible.

Respondent asserts that under full-film conditions its product is of no benefit to lubrication. On the other hand, respondent claims that when boundary condition is approached, its product has a definite beneficial effect.

Boundary conditions are often brought about by lowering of the viscosity of the lubricant, the introduction of grit between the surfaces and the fluctuating temperatures under the wide range of speed and load of a motor. There are many other factors which cause boundary conditions. Viscosity is lowered by the introduction of gas into the oil and other causes. Grit causes the metal surfaces to strike each other and the grit. The extremes of temperature change the size and shape of the bearing surfaces.

The Commission finds that the viscosity and other properties and qualities of a film of lubricant are unaffected by the presence of the coloidal graphite in "Koatsal" whether a motor is operated under full-film or boundary conditions. "Koatsal" has the same qualities, properties, and characteristics as the oil therein contained has and no more. Its effect upon the metal surfaces of a bearing is the same effect as is produced by the oil therein contained and no more.

In tests made on bearings with plain oil and also with graphite oil, it has been determined that in the presence of an ample supply of oil, "Koatsal" has no measurable effect on the friction, power, or economy of a gasoline engine. No reduction of friction is accomplished by conditioning a motor with "Koatsal."

Tests were also made by running automobiles and bearings to destruction and comparisons made as to the effect of "Koatsal" on durability of parts. It is determined from these tests that a bearing will run without substantial damage for an indefinite period after oil is drained from the crankcase so long as a film of oil is maintained between the moving and stationary surfaces of metal, whether the bearing has been conditioned with "Koatsal" or not. It is also determined from tests that as soon as the film of oil is removed and boundary conditions exist that a bearing is quickly destroyed, whether previously conditioned with "Koatsal" or not.

Salesmen, distributors, and demonstrators of respondent's products have earned insignificant amounts in purchasing "Koatsal" from respondent and reselling it to the public.

PAR. 6. Respondent's advertising and representations hereinabove described have had and still have the tendency and capacity to mislead and deceive the purchasing public regarding the value, efficacy and effect of "Koatsal." As a direct consequence of the deceptive acts and representations of the respondent and the erroneous and mistaken beliefs induced by said acts, the purchasing public has pur-

chased respondent's product with the result that trade has been unfairly diverted to the respondent from competitors engaged in the business of distributing or selling products designed for similar usage, who truthfully advertise and represent the properties, qualities, capacities, and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 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 repondent, 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 complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McOuat, counsel for the Commission, and E. E. Franchot, counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Kidder Oil Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its product "Koatsal" whether sold under that name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That Joseph K. Kidder is an original pioneer in the blending of colloidal graphite and lubricating oil and that he has great scientific knowledge which enabled him to develop Koatsal.

2. That Koatsal penetrates and adheres to all metal surfaces it reaches, permeates the pores of the metal, soaks into the metal, and that the metal becomes plated with Koatsal and moving parts ride on this plating.

3. That an automobile conditioned with Koatsal will run any greater distance without oil in the crankcase without damage to any part than will an automobile conditioned with ordinary lubricating oil of the same quality used in Koatsal.

4. That the lubricating qualities of Koatsal are any greater than the lubricating qualities of the oil which it contains.

5. That the usual and customary earnings or profit to be derived from the sale of its product by distributors, salesmen and demonstrators are larger than and in excess of the usual and customary amounts actually so earned under normal conditions in the due course of business.

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

IN THE MATTER OF

PEANUT SPECIALTY COMPANY

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

Docket 2273. Complaint, June 22, 1939[1]*—Decision, Sept. 23, 1939*

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) box of large number of malted milk balls, together with four-section push card, for sale and distribution of said milk balls under a plan and in accordance with said card's explanatory legend by which customer received for penny paid from said "Basketball" assortment 1, 2, 3, 5, 10, or 20 pieces in accordance with legend secured by chance through disk of card selected for push, and last sale in first three sections entitled purchasers to 5 pieces, and last sale on card entitled purchaser to 15 pieces, and (2) number of penny pieces of chocolate covered candy of uniform size, shape, and quality, together with a number of larger pieces to be given as prizes to those purchasers of such uniform pieces who secured by chance one of a relatively few pieces thereof, the enclosed colored centers of which differed from majority, and together with explanatory display card for retailers' use, and (3) various other assortments of which the two above described were illustrative—

Sold to wholesalers, jobbers, and retailers for display and resale by retailer purchasers thereof in accordance with the aforesaid sales plans such 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 sales plans above described, involving game of chance or sale of a chance to procure additional pieces of candy without additional cost, or larger pieces of candy or packages of candy, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with 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;

With result that many persons were attracted by sales plans or methods employed by it in sale and distribution of its candy and element of chance involved therein and were thereby induced to buy and sell its said product in preference to that of competitors who do not use such or equivalent methods, and with effect, through use of such method by it and by reason of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:

[1] Amended and supplemental.

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Amended and Supplemental Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Peanut Specialty Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, Peanut Specialty Co., is a corporation organized and doing business 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. 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 dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in the various other States of the United States and 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 by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of the said business respondent is and has been 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 and in the District of Columbia.

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 so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes 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 sale and distribution of candy by lot or chance:

(*a*) One assortment consists of a box of 216 count malted milk balls together with a device commonly called a push card. The push card is divided into 4 sections and each of said sections contains 25 partially perforated discs, on the face of which is printed the word "push." Concealed within the said disc is one of the following words or phrases: Basket, double free throw, free throw, tip off, time out, out of bounds, double dribble, traveling, and foul. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disc removed or separated from said push card. Punches on the said card are 1 cent each and the number of malted milk balls received by the purchaser is determined by the following legend which appears on the face of the card:

BASKETBALL (1¢)

BASKET receives	20 Pieces
DOUBLE FREE THROW receives	10 Pieces
FREE THROW reecives	10 Pieces
TIP OFF receives	5 Pieces
TIME OUT receives	5 Pieces
OUT OF BOUNDS receives	3 Pieves
DOUBLE DRIBBLE receives	3 Pieces
TRAVELING receives	2 Pieces
FOUL receives	1 Piece
Last Sale in First 3 Sections receives	5 Pieces
Last Sale on Card receives	15 Pieces

The sales of respondent's candy by means of said push card are made in accordance with the above-described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receives one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similiar to the one hereinbefore described and vary only in detail.

(*b*) Another of said assortments of candy consists of a number of pieces of chocolate covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy or packages of candy which larger pieces of candy or packages of candy are to given as prizes to purchasers of said candy of uniform size, shape, and quality in the following manner:

The majority of said chocolate covered candy in said assortment has centers of the same color, but a small number of pieces of said chocolate covered candy have centers of a different color. The color of the center of said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The said candy of uniform size, shape, and quality in said assortment retails at the price of 1 cent each, but the purchasers who procure a piece of the said candy having a center of a different color than the majority of pieces of said candy are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy or packages of candy heretofore referred to. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said pieces of candy are thus to procure one of the larger pieces of candy or packages of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers, jobbers, and retail dealers with said assortments of candy, display cards to be used by retail dealers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candy are being sold in accordance with the sales plan above described. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments of candy to retail dealers and said retail dealers expose said assortment for sale in connection with the aforesaid display cards and sell said candy to the purchasing public in accordance with the aforesaid sales plan.

Respondent sells and distributes, and has sold and distributed, various assortments of candy as above described involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. 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. The use by respondent of said sales plans or methods in the sale of its candies and the sale of said candies by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candies to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without addi-

tional cost or such larger pieces of candy or packages of candy in the manner alleged. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above alleged, 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its candies and in the element of chance involved therein and are thereby induced to buy and sell respondent's candies in preference to candies of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 22, 1939, issued and thereafter served its amended and supplemental complaint in this proceeding upon respondent Peanut Specialty Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 11, 1939, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said amended and supplemental complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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, Peanut Specialty Co., is a corporation organized and doing business 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. 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 dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in the various other States of the United States and 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 by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of the said business respondent is and has been 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 and in the District of Columbia.

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 so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes 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 sale and distribution of candy by lot or chance:

(*a*) One assortment consists of a box of 216 count malted milk balls together with a device commonly called a push card. The push card is divided into 4 sections and each of said sections contains 25 partially perforated discs, on the face of which is printed the word "push." Concealed within the said disc is one of the following words or phrases: Basket, double free throw, free throw, tip off, time out, out of bounds, double dribble, traveling, and foul. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disc removed or separated from said push card. Punches on the said cards are 1¢ each and the number of malted milk balls received by

the purchaser is determined by the following legend which appears on the face of the card:

BASKETBALL (1¢)

BASKET receives	20 Pieces
DOUBLE FREE THROW receives	10 Pieces
FREE THROW receives	10 Pieces
TIP OFF receives	5 Pieces
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TRAVELING receives	2 Pieces
FOUL receives	1 Piece
Last Sale in First 3 Sections receives	5 Pieces
Last Sale on Card receives	15 Pieces

The sales of respondent's candy by means of said push card are made in accordance with the above-described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receives one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similar to the one hereinbefore described and vary only in detail.

(*b*) Another of said assortments of candy consists of a number of pieces of chocolate-covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy or packages of candy which larger pieces of candy or packages of candy are to be given as prizes to purchasers of said candy of uniform size, shape, and quality in the following manner:

The majority of said chocolate-covered candy in said assortment has centers of the same color, but a small number of pieces of said chocolate covered candy have centers of a different color. The color of the center of said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The said candy of uniform size, shape, and quality in said assortment retails at the price of 1 cent each, but the purchasers who procure a piece of the said candy having a center of a different color than the majority of pieces of said candy are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy or packages of candy heretofore referred to. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said

pieces of candy are thus to procure one of the larger pieces of candy or packages of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers, jobbers, and retail dealers with said assortments of candy, display cards to be used by retail dealers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candy are being sold in accordance with the sales plan above described. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candy to the purchasing public in accordance with the aforesaid sales plan.

Respondent sells and distributes, and has sold and distributed, various assortments of candy as above described involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. 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 described. The use by respondent of said sales plans or methods in the sale of its candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods and plans hereinabove described involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost or such larger pieces of candy or packages of candy in the manner above found. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above found, are unwilling to adopt and use such methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by

respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been 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 respondent as hereinabove found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Peanut Specialty Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy 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 dealers assortments of candy or any other merchandise together with push or pull cards, punchboards, or other lottery devices, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing said candy or other merchandise to the general public.

3. Packing or assembling in the same package or assortment of candy for sale to the general 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 purchasers procuring a piece of candy having a center of a particular color.

4. Selling or otherwise disposing of candy or any other merchandise by use of push or pull cards, punchboards or other lottery devices.

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

KARL W. PETERS, TRADING AS NATIONAL INSTITUTE FOR PHYSICAL ADVANCEMENT

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

Docket 3460. Complaint, June 16, 1938—Decision, Sept. 26, 1939

Where an individual engaged in sale and distribution of physical culture book designated "Bust Culture," to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in distribution and sale of like and similar books, courses, methods, and articles on physical culture and bust culture, and including many who do not in any manner misrepresent the results to be obtained from their said culture methods or courses and do not use representations, acts and practices used as below set forth in connection with sale and distribution of their books, courses, methods, and articles—

Represented, through testimonials, letters, circulars, leaflets, newspaper, and magazine advertisements, and by other means, that through following method outlined in said book any woman could obtain a beautiful bust, and that there was no need to be flatchested or embarrassed by overly large or sagging bust, and that said method had helped millions, and that it had been tried out and found effective in all cases, and that no matter what a woman's problem might be concerning her bustline and breasts, she would find the proper, effective method of correction in said book;

Facts being representations and implications thus made and used were grossly exaggerated, false, misleading, and deceptive, and said method would not obtain for all women beautiful busts and accomplish results set forth above, had not helped millions nor been found effective in all cases, and woman would not find in it proper method of correction, irrespective of her problem with respect to matters aforesaid;

With effect of causing substantial portion of purchasing public to form mistaken and erroneous beliefs that said representations were true, and that results claimed by him would be obtained upon following his method and course, and into purchase of his said book because of such beliefs induced as aforesaid, and of thereby diverting trade unfairly to him from his competitors aforesaid; to the injury of competition in commerce:

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. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. Reuben J. Martin, *Mr. DeWitt T. Puckett*, and *Mr. Merle P. Lyon* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Karl W. Peters, trading as National Institute for Physical Advancement, hereinafter referred to as respondent, has violated the provisions of the 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, Karl W. Peters, is an individual, trading as National Institute for Physical Advancement, with his principal place of business located at 113 West Fifty-seventh Street, in the city of New York, State of New York. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of a physical culture book, designated "Bust Culture."

PAR. 2. In the course and conduct of his business, as hereinbefore described, respondent has caused said book, when sold, to be transported from his 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. During all the times mentioned herein respondent has maintained a course of trade in said book so sold and distributed by respondent 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, respondent has been, and is now, in substantial competition with other individuals, and with partnerships, firms, and corporations, engaged in the distribution and sale of like and similar books, courses, methods, and articles on physical culture, including bust culture, 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 business, and to induce the purchase of his book in said commerce, the respondent, by means of testimonials, letters, circulars, leaflets, newspaper and magazine advertisements, and by other means, has circulated and disseminated among prospective purchasers many statements concerning said book. These statements contain many false and misleading representations and implications as to the results to be obtained from following the directions and instructions contained in said book. Among and typical of the statements so used by the respondent are the following:

A guaranteed method.

You too can have a beautiful bust.

No need to be flatchested or embarrassed by overly large or sagging bust.

No cause for unsightly bust after motherhood.

A system that has helped millions.

Karl W. Peters, international authority, will show you Nature's Way to easily acquire the kind of form you've always envied.

A simple, natural, absolutely non-dangerous system, tried out and found effective in all cases where women follow the instructions.

No matter what your problem may be concerning your bustline and breasts, you will find the method of correction in these pages.

According to your condition it may take one, two or even three months before complete correction is achieved.

By the means and in the manner aforesaid, the respondent represents and implies that his book contains a guaranteed method for a beautiful bust; that there is no need to be flat-chested or embarrassed by overly large or sagging bust; that his method has helped millions; that it has been tried out and found effective in all cases; and that no matter what a woman's problem may be concerning her bustline and breasts, she will find the proper, effective method of correction in respondent's book.

PAR. 5. The representations and implications so made and used by the respondent, as hereinabove alleged, with respect to said book and its results, are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, the method outlined in said book is not a guaranteed method for a beautiful bust, and it will not correct a flat chest, or overly large or sagging bust. In truth and in fact, the method outlined in said book has not helped millions, nor has it been found effective in all cases. In truth and in fact, a woman will not find the proper method of correction in respondent's book irrespective of her problem concerning her bustline and breasts.

PAR. 6. Among the competitors of respondent, described in Paragraph Three hereof, are many who do not in any manner misrepresent the results to be obtained from their physical culture or bust culture methods or courses, and who do not use the representations, acts, and practices used by the respondent, as herein alleged, in connection with the sale and distribution of their books, courses, methods, and articles in commerce, as herein described.

PAR. 7. The use of the aforesaid representations by the respondent, as herein alleged in connection with the sale and distribution of his said book in commerce as herein described, has had, and has, a tendency and capacity to, and does, cause a substantial portion of the purchasing public to form the mistaken and erroneous beliefs that said representations are true and that the results claimed by respondent will be obtained upon following respondent's method and course of instruction and into the purchase of respondent's said

book because of said beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to respondent from those of his competitors referred to in paragraph 6. In consequence, 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.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 16, 1938, issued, and on June 25, 1938, served, its complaint in this proceeding upon the respondent, Karl W. Peters, an individual, trading as National Institute For Physical Advancement, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, Karl W. Peters, is an individual, trading as National Institute for Physical Advancement, with his principal place of business located at 113 West Fifty-seventh Street, in the city of New York, State of New York. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of a physical culture book, designated "Bust Culture."

PAR. 2. In the course and conduct of his business, as hereinbefore described, respondent has caused said book, when sold, to be transported from his 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. During all the times mentioned herein respondent has maintained a course of trade in said book so sold and distributed by respondent 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, respondent has been, and is now, in substantial competition with other individuals, and with partnerships, firms, and corporations, engaged in the distribution and sale of like and similar books, courses, methods, and articles on physical culture, including bust culture, 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 business, and to induce the purchase of his book in said commerce, the respondent, by means of testimonials, letters, circulars, leaflets, newspaper and magazine advertisements, and by other means, has circulated and disseminated among prospective purchasers many statements concerning said book. These statements contain many false and misleading representations and implications as to the results to be obtained from following the directions and instructions contained in said book. Among and typical of the statements so used by the respondent are the following:

A guaranteed method.

You too can have a beautiful bust.

No need to be flatchested or embarrassed by overly large or sagging bust.

No cause for unsightly bust after motherhood.

A system that has helped millions.

Karl W. Peters, international authority, will show you Nature's Way to easily acquire the kind of form you've always envied.

A simple, natural, absolutely non-dangerous system, tried out and found effective in all cases where women follow the instructions.

No matter what your problem may be concerning your bustline and breasts, you will find the method of correction in these pages.

According to your condition it may take one, two or even three months before complete correction is achieved.

By the means and in the manner aforesaid, the respondent represents and implies that by following the method outlined in respondent's book any woman can obtain a beautiful bust; that there is no need to be flat-chested or embarrassed by overly large or sagging bust; that his method has helped millions; that it has been tried out and found effective in all cases; and that no matter what a woman's problem may be concerning her bustline and breasts, she will find the proper, effective method of correction in respondent's book.

PAR. 5. The representations and implications so made and used by the respondent, as hereinabove alleged, with respect to said book and its results, are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, the method outlined in said book will not obtain for all women a beautiful bust, and it will not correct a flat-chest, or overly large or sagging bust. In truth and in fact, the method outlined in said book has not helped millions, nor has it been found effective in all cases. In truth and in fact, a woman will not find the proper method of correction in respondent's book irrespective of her problem concerning her bustline and breasts.

PAR. 6. Among the competitors of respondent, described in Paragraph Three hereof, are many who do not in any manner misrepresent the results to be obtained from their physical culture or bust culture methods or courses, and who do not use the representations, acts, and practices used by the respondent, as herein alleged, in connection with the sale and distribution of their books, courses, methods, and articles in commerce, as herein described.

PAR. 7. The use of the aforesaid representations by the respondent, as herein alleged in connection with the sale and distribution of his said book in commerce as herein described, has had, and has, a tendency and capacity to, and does, cause a substantial portion of the purchasing public to form the mistaken and erroneous beliefs that said representations are true and that the results claimed by respondent will be obtained upon following respondent's method and course of instruction and into the purchase of respondent's said book because of said beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to respondent from those of his competitors referred to in paragraph 6. In consequence, 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.

CONCLUSION

The aforesaid acts and practices of the respondent have been and 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 meaning and intent 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Karl W. Peters, individually, trading as National Institute For Physical Advancement, or trading under any other name, his agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a physical culture book, designated "Bust Culture," or any similar book, whether sold under that name or any other name or title, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That by following the method outlined in respondent's book any woman can obtain a beautiful bust.

2. That the method outlined in respondent's book will correct a flat chest or an overly large or sagging bust.

3. That the method outlined in respondent's book has helped millions of women or any other exaggerated number in excess of the actual number of women who have tried and been helped by said method; or that said method has been found effective in all cases.

4. That the proper method of correction of any problem concerning bustline and breasts will be found in respondent's book.

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

PARFUMS LENGYEL, LTD.

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

Docket 3666. Complaint, Dec. 17, 1938—Decision, Sept. 26, 1939

Where a corporation engaged, as "Parfums Lengyel, Ltd.," in selling and distributing perfumes, toilet waters, and other cosmetic preparations—

Represented, through advertising folders, price lists and advertisements in periodicals and newspapers of general circulation among the various States and in the District of Columbia, that its said products were made or compounded in France and imported into the United States, facts being they were not made or compounded in France or in any other foreign country and imported, but were made and compounded in the United States from essential ingredients which were imported from France and other European countries;

With tendency and capacity to mislead and deceive substantial part of purchasing public into erroneous and mistaken belief that said products were made or compounded in France and imported into the United States, for which products, as imported from foreign countries, and particularly for the higher-priced French products, there is a preference on the part of the purchasing public, and with result, as consequence of such belief, that number of said public purchased substantial portion of its products and trade was diverted unfairly to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of perfumes, toilet waters, and other cosmetic preparations, and who truthfully represent the country or source of origin of their said products; to the substantial injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, trial examiner.
Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Parfums Lengyel, Ltd., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint setting forth its charges in that respect as follows:

PARAGRAPH 1. Respondent, Parfums Lengyel, Ltd., is a corporation created by and existing under the laws of the State of New York, with its principal office and place of business located at 105 East Twenty-ninth Street, city of New York, State of New York.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling and distributing perfumes, toilet waters, and other cosmetic preparations. Respondent causes said products, when sold, to be transported from its place of business in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said perfumes, toilet waters, and other cosmetic preparations, 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 respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes, toilet waters and other cosmetic preparations in commerce between and among 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 products, respondent has made representations concerning the country in which its said products are manufactured, the said representations having been made by means of advertising folders, price lists and by means of advertisements inserted in magazines and newspapers having a general circulation among and between the various States of the United States and in the District of Columbia. In all of its advertising literature and newspaper and magazine advertisements respondent directly or indirectly represents that the perfumes, toilet waters and other cosmetic preparations sold and distributed by it are manufactured in France and imported into the United States.

PAR. 5. The representations made by respondent with respect to the country in which its products are manufactured are grossly exaggerated, misleading and untrue. In truth and in fact, the perfumes, toilet waters, and other cosmetic preparations sold and distributed by respondent are not imported from France nor any other foreign country into the United States but are manufactured in the United States from essential ingredients among which are some imported from France.

PAR. 6. There is a preference on the part of the buying public for perfumes, toilet waters and other cosmetic preparations which are

manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes, toilet waters, and other cosmetic preparations manufactured in France, and such goods so manufactured and imported command and bring from the purchasing public a higher price in the markets of the United States than domestic perfumes, toilet waters and other cosmetic preparations of the same nature and descriptions.

PAR. 7. There are among respondent's competitors many who manufacture, distribute and sell perfumes, toilet waters, and other cosmetic preparations who truthfully represent the place, or country in which their products are manufactured.

PAR. 8. The use of the aforesaid false and misleading statements and misrepresentations by the respondent in designating and describing its products was and is calculated to have and now has a tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said misrepresentations are true.

As a result of this mistaken and erroneous belief a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from its competitors likewise engaged in the business of distributing and selling perfumes, toilet waters, and other cosmetic preparations, who truthfully advertise their products. As a consequence thereof injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and to respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 17, 1938, issued and served it complaint in this proceeding upon said respondent, Parfums Lengyel, Ltd., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondend filed no answer in this proceeding. Thereafter, this cause came on for the taking of testimony, and a stipulation as to the facts to 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

was entered into by and between S. Brogdyne Teu, II, counsel for the Commission, and Georges Lengyel, vice president of the respondent corporation, and made a part of the record in this cause. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the stipulation as to the facts, and brief in support of the allegations of the complaint (respondent not having filed brief and 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. Parfums Lengyel, Ltd., is a corporation created by and existing under the laws of the State of Delaware. It has its principal office and place of business located at 680 Fifth Avenue, New York, N. Y.

PAR. 2. The respondent has for more than 1 year last past been engaged in the business of selling and distributing perfumes, toilet waters, and other cosmetic preparations. When the respondent's products are sold, it causes them to be transported from its place of business in New York to customers located in other States of the United States and in the District of Columbia.

PAR. 3. The respondent has at all times mentioned herein maintained and still maintains a course of trade in its products sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The respondent has been and is now in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes, toilet waters, and other cosmetic preparations 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 its business and for the purpose of inducing the purchase of its products, the respondent has made representations concerning the country in which its products are made or compounded. The representations have been made by means of advertising folders, price lists and by advertisements inserted in magazines and newspapers having a general circulation among and between the various States of the United States and in the District of Columbia. In all of the advertising literature and newspaper and magazine advertisements the respondent has represented

that the perfumes, toilet waters and other cosmetic preparations sold and distributed by it are made or compounded in France and imported into the United States.

PAR. 6. The representations made by respondent with respect to the country in which its products are made or compounded are misleading and confusing. Perfumes, toilet waters, and other cosmetic preparations sold and distributed by the respondent are not made or compounded in France or any other foreign country and imported into the United States, but are made or compounded in the United States from essential ingredients which are imported from France and other European countries.

PAR. 7. There is a preference on the part of the purchasing public for perfumes, toilet waters, and other cosmetic preparations made or compounded in foreign countries and imported into the United States. This is particularly true regarding perfumes, toilet waters, and other cosmetic preparations made or compounded in France and imported into the United States. Such products, so made or compounded, and imported as above stated command and bring from the purchasing public a higher price in the markets of the United States than domestic perfumes, toilet waters, and other cosmetic preparations of the same nature and description.

PAR. 8. There are among competitors of the respondent many who manufacture, distribute and sell perfumes, toilet waters, and other cosmetic preparations who truthfully represent the place or country in which their products are manufactured.

PAR. 9. The use of the statements and representations by respondent as herein set forth in connection with the sale and distribution of its products, has had and now has the tendency and capacity to mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that the said products are made or compounded in France and imported into the United States.

As a result of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial portion of respondent's products, with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, toilet waters, and other cosmetic preparations 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 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 respondent as herein found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the facts entered into between the respondent herein and S. Brogdyne Teu, II, counsel for the Commission, the said stipulation of facts being made of record and in lieu of testimony in support of or in opposition to the charges in the complaint brief filed in support of the allegations of the complaint (respondent not having filed brief and oral argument not having been requested), 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 respondent, Parfums Lengyel, Ltd., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its perfumes, toilet waters and other cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of any terms, words, symbols, or picturizations, indicative of French or other foreign origin of such products, or in any manner, that perfumes, toilet waters, or other cosmetic preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country, provided however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied with a statement that such products are made or compounded in the United States.

2. Using any French or other foreign terms or words except as provided in paragraph 3 hereof to designate, describe, or in any way refer to perfumes, toilet waters, or other cosmetic preparations made or compounded in the United States unless the English translation or equivalent thereof appears as conspicuously and in immediate connection therewith.

3. Using any French or other foreign words or terms as brand or trade names for perfumes, toilet waters, or other cosmetic preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

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

CHANEL, INC.

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

Docket 3096. Complaint, Apr. 3, 1937—Decision, Sept. 27, 1939

Where a domestic corporation engaged, under name "Chanel, Inc.," in making, in the United States, from compounded concentrates which it purchased from Les Parfums Chanel, S. A., of Paris and imported into the United States, its "Chanel" perfumes, through adding to such concentrates, in proper proportion to make usable and merchantable perfume, domestic alcohol, and in thus bottling, packaging, and selling its said "Chanel" perfumes, bottles, and some of cartons for which it imported from Paris, and various brands of which were blended by it to same formulae as were employed for identically named brands put up in Paris with French, instead of American, alcohol, and also to the same formulae as used for similarly named brands wherever sold, and which, as thus engaged, had no branch organization in London, Paris, or elsewhere, nor any material connection with other similarly named organizations selling "Chanel" brands under arrangement by which the famous dress maker owned 10 percent of stock of each in return for use of her name and approval of the formulae employed—

(*a*) Labeled cartons and containers of different special brands of its said "Chanel" perfumes as "Glamour de Chanel, Paris, France," "Jasmin de Chanel, Paris," "No. 5, Chanel, Paris," "Gardenia de Chanel, Paris," and "Cuir de Russie, Chanel, Paris";

(*b*) Made use of such brands and designations of origin in advertisements of its said products in such periodicals as "New Yorker," "Vogue," and "Toilet Requisites," and in such advertisements displayed conspicuously terms "Chanel, Paris," and nowhere name "Chanel, Inc.," though following, in some instances in some advertisements and in its catalog, word "Chanel" with its New York address;

(*c*) Held out Chanel, the dress designer, as the maker of her famous perfumes, through such statements as "This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes * * *," there described as "romantic, alluring, youthful," and adding that "they add that last touch of real chic," and similarly stressed elsewhere association of ideas as aforesaid; and

(*d*) Set forth on front cover of catalog and price list published and issued by it, "Chanel, Inc., 35 West 34th Street, New York—Paris—London," and sold individual bottles of perfume, packed for delivery to consumers, in cartons bearing words "Chanel—Paris—London—New York";

Facts being said perfumes were not made in Paris and imported, but part of ingredients were imported therefrom and other essential ingredients added in the United States, where final and essential step in manufacture was completed, and famous dressmaker referred to did not and never had made

perfumes, but, prior to arrangement aforesaid, had her perfumes made by others, as did many Paris dressmakers;

With effect, through use of such French names and terms, with their well understood implications by many in the United States, as aforesaid, of implying French or Paris origin for products in question and indicating relationships or affiliations which did not exist between said corporation and foreign organizations, and with tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said products were made and compounded in France and imported into the United States, such as long widely popular and in demand on part of purchasing and consuming public, and considered superior by many of such public to perfumes made and compounded domestically, and with result, as consequence of such mistaken and erroneous belief, that purchasing and consuming public, bought substantial portion of its products and trade was unfairly diverted to it from competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of perfumes, powders, cosmetics, and other toilet products, and who truthfully represent the country or source of origin thereof; to the substantial injury of competition in commerce:

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

Before *Mr. John W. Norwood*, trial examiner.
Mr. S. Brogdyne Teu, II for the Commission.
Olvany, Eisner & Donnelly, 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 Chanel, Inc., a New York 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 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 Chanel, Inc., is a corporation having its principal place of business at 35 West Thirty-fourth Street in the city of New York, State of New York. It is now, and has for more than 1 year last past been engaged in the mixing and compounding of toilet preparations, including perfumes, powders, cosmetics, and other products and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia.

When said products are sold respondent transports or causes the same to be transported from its principal 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. There is now and has been for more than 1 year last past and still is a constant current of trade in commerce in said products so manufactured and sold by respondent between and among the various States of the United States and in the District of Columbia.

Respondent is now and has for more than 1 year last past been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture, sale and distribution, and importation of perfumes, powders, cosmetics, and other toilet requisites in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, certain of respondent's perfume products so sold bear labels purporting to describe and refer to the place of origin or of manufacture of said products as follows:

1. "Glamour de Chanel,
   Paris, France"
2. CHANEL-JASMIN,
   Chanel, Paris
3. No. 5,
   Chanel, Paris
4. Gardenia de Chanel,
   Paris

The use of such statements as herein set-out serve as representations that said products were and are manufactured or compounded in France and imported into this country.

PAR. 3. The use of the above-quoted representations appearing on the cartons and containers of respondent's said products has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the above-referred-to products of respondent are manufactured or compounded in France and imported into the United States. In truth and in fact none of the above-referred-to products of respondent are manufactured or compounded in France but are manufactured or compounded in the United States.

PAR. 4. The respondent has caused and still causes advertising copy purported to be descriptive of its products to be inserted into magazines having a general interstate circulation. The following

is representative of said copy and the representations made therein by the respondent concerning its products:

Possibly you did not know it, but at some time or other Chanel's label was in the original model of your gown. This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes. They are romantic, alluring, youthful and they add that last touch of real chic. And

If you still have youth—or if you are an admirer of youth—and want to keep it in all its alluring enchantment * * * then you are Chanel's type. It is for you that she designs the clothes which made her famous, and for you she made the lovely perfumes that complete the picture of her ideal. Perfumes that will haunt you. They will accentuate your type, add that final touch of chic to your personality.

PAR. 5. For many years the French firm of Chanel, Inc., 41 Roue Cambou, Paris, France, has possessed an enviable reputation for the excellence of its products. Among the products of the aforementioned Chanel, Inc., of Paris, France, are wearing apparel, perfumes, cosmetics, and other toiletries.

PAR. 6. The above representations made by respondent in its advertising have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken belief that the products of respondent so described in its advertisements are manufactured by Chanel, Inc., of Paris, France. In truth and in fact the said products are not manufactured by Chanel, Inc., of Paris, but are compounded by respondent corporation.

PAR. 7. There is a preference on the part of a certain part of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; this is particularly true regarding perfumes and cosmetics manufactured in France and such goods so manufactured and imported command and bring from that said part of the purchasing public a higher price in the markets of the United States than domestic perfumes and cosmetics of the same nature and description.

PAR. 8. Each and all of the foregoing false and misleading statements used by the respondent in designating and describing its products and the source of origin and place of manufacture thereof were and are calculated to and had and now have the tendency and capacity to and do mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products were and are of foreign manufacture and were and are imported from France into the United States, and were and are manufactured or compounded by Chanel, Inc., of Paris, France, and into the purchase of respondent's products on account thereof.

PAR. 9. As a result of the use of the aforesaid labels, advertising, and representations trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries, perfumes, powders, cosmetics, and other toiletries manufactured in foreign countries, or who manufacture or compound perfumes, powders, cosmetics, and other toiletries in this country for sale to the buying public and who truthfully represent, and advertise the place of origin and quality of their products.

PAR. 10. The 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 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 April 3, 1937, issued, and on April 5, 1937, served its complaint in this proceeding upon respondent Chanel, 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 said complaint and 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 Mark Eisner, of Olvany, Eisner & Donnelly, attorneys for the respondent, before John W. Norwood, a 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 proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs, and supplemental 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, Chanel, Inc., is a New York corporation. It has its principal office and place of business at 35 West Thirty-fourth Street, New York, N. Y. It is now, and has been for

some time past, engaged in the making and compounding of toilet preparations. Among the toilet preparations made and compounded by the respondent are perfumes, powders, cosmetics, and other toilet products. The respondent has for some time past been engaged in the sale and distribution of its products in commerce between and among the various States of the United States and in the District of Columbia.

When the respondent sells its products it causes them to be transported from its principal place of business in New York, N. Y., to purchasers thereof located throughout the various States of the United States. There is now, and has been for some time past, a course of trade in commerce in the respondent's products between and among the various States of the United States and in the District of Columbia.

The respondent is now, and for some time past has been, engaged in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of perfumes, powders, and other toilet preparations in commerce between and among the various States of the United States.

PAR. 2. The respondent, in the conduct of its business, and for the purpose of inducing the sale of certain of its products, sold different special brands of its perfumes labeled on cartons and containers as follows: (1) "Glamour de Chanel, Paris, France"; (2) "Jasmin de Chanel, Paris"; (3) "No. 5, Chanel, Paris"; (4) "Gardenia de Chanel, Paris"; and (5) "Cuir de Russie, Chanel, Paris."

PAR. 3. Respondent advertised the aforesaid products in the New Yorker Magazine, Vogue Magazine, and Toilet Requisites Magazine, employing the brand names and origin designations as set forth above. In these advertisements, as shown by the exhibits, the words "Chanel, Paris" appear conspicuously and nowhere are the terms "Chanel, Inc." used, but respondent's catalog and some of its advertisements show that respondent's business address, 35 West Thirty-fourth Street, New York, N. Y., was used after the word CHANEL. Chanel, the dress designer, is held out as the maker of her famous perfumes in an advertisement featuring respondent's "No. 5, Chanel, Paris" brand. The statement reads:

> Possibly you did not know it, but at some time or other Chanel's label was in the original model of your gown. This most copied and popular couturiere, ardent sponsor of Youth and designs that keep you enchantingly young looking, had the same idea in mind when she made her famous perfumes. They are romantic, alluring, youthful and they add that last touch of real chic.

An advertisement featuring "Gardenia de Chanel, Paris," "Glamour de Chanel," and "Jasmin de Chanel" contains the following:

> If you still have youth—or if you are an admirer of youth—and want to keep it in all its alluring enchantment * * * then you are Chanel's type. It is

for you that she designs the clothes which made her famous, and for you she made the lovely perfumes that complete the picture of her ideal. Perfumes that will haunt you. They will accentuate your type, add that final touch of chic to your personality.

The catalog and price list published and issued by respondent bears the following on the front cover: "Chanel, Inc., 35 West 34th Street, New York—Paris—London." Cartons in which individual bottles of perfume are packed for delivery to consumers bear the words "Chanel—Paris—London—New York."

PAR. 4. Respondent mixes or compounds all of its aforesaid perfumes in the United States, where it bottles, packages, sells, and ships the same to its customers therein. All of these perfumes are made from compounded concentrates which respondent purchases from Les Parfums Chanel, S. A., of Paris, France, and imports into the United States. These concentrates are not a usable commodity until alcohol, the agent of application, is added in proper proportion to make a usable and merchantable perfume. Respondent adds domestic alcohol and so completes the compound in the United States, where it is bottled, packaged, and sold. Sometimes respondent blends these concentrates in the United States, and occasionally other ingredients besides the alcohol are added in the United States; but the ingredients of a particular brand of perfume and the proportions thereof when sold by respondent are substantially the same as contained in the identical brand put-up and sold in Paris, France, or elsewhere. That is, they are blended to the same formulae, but the French perfume contains French alcohol and that compounded by respondent contains American alcohol of the same grade. The bottles and some of the cartons are imported by respondent from Paris, France. In these circumstances it is clear, and the Commission so finds, that the aforesaid perfumes are not manufactured in Paris, France, and imported therefrom to the United States. Part of the ingredients thereof are imported from Paris, France, and other essential ingredients are added in the United States where a final and essential step in its manufacture is completed.

PAR. 5. Respondent Chanel, Inc., has no branch organization in London, Paris, or anywhere else. There is no Chanel, Inc., in Paris, France, but respondent owns some of the capital stock of Les Parfums Chanel, S. A., from which it purchases ingredients for its perfumes. There are other organizations throughout the world which sell the aforesaid brands of Chanel perfumes, but respondent has no material connection with them. All sell the Chanel brands and Madame Chanel owns 10 per cent of the capital stock of each

of them which she acquired in return for the use of her name and for her approval of the formulae. Madame Chanel does not manufacture perfumes and has never done so, but, prior to the present arrangement, she had her perfumes manufactured by others. Many Paris dressmakers have their brands of perfumes, which are made up for them. Madame Chanel owns textile, jewelry, and other interests.

PAR. 6. The use by respondent, as set forth above, of the terms Paris, France, Madame Chanel, Chanel—Paris, and of the French names of its products and of the labels and advertisements heretofore mentioned, have, in the circumstances shown, the effect of implying a French or Paris origin for these perfumes and of indicating relationships or affiliations which do not exist between respondent and foreign organizations. The implications of these terms are well understood by many people in the United States and operate to increase respondent's sales in this country.

Perfumes made or compounded in France have for many years enjoyed widespread popularity and demand on the part of the purchasing and consuming public throughout the United States, many of whom believe and consider that perfumes made or compounded in France are superior in quality and other desirable characteristics to perfumes made and compounded in the United States.

PAR. 7. The use by the respondent of the statements and representations herein set-out, and others of similar import not herein set-out, in connection with the sale and distribution of its aforesaid products, has had and now has the tendency and capacity to mislead and deceive a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that said products are manufactured and compounded in France and imported into the United States.

As a result of this mistaken and erroneous belief, the purchasing and consuming public have purchased a substantial portion of the respondent's products, with the result that trade has been unfairly diverted to the respondents from its competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, powders, cosmetics, and other toilet products, 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 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 respondent as herein found 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 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, 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 S. Brogdyne Teu, II, counsel for the Commission, and by Mark Eisner, 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 the Federal Trade Commission Act.

It is ordered, That the respondent Chanel, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, powders, cosmetics, and other toilet preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Paris, France," or of any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes, powders, cosmetics, or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country; provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

2. Using any French or other foreign terms or words, except as provided in paragraph 3 hereof, to designate, describe, or in any way refer to perfumes, powders, cosmetics, or other toilet preparations made or compounded in the United States, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

3. Using the terms "Glamour de Chanel," "Jasmin de Chanel," "Gardenia de Chanel," "Cuir de Russie," or any other French or other foreign words or terms as brands or trade names for perfumes,

powders, cosmetics, or other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

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

ETABLISSEMENTS RIGAUD, INC., AND E. FOUGERA & 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 3337. Complaint, Feb. 15, 1938—Decision, Sept. 27, 1939

Where a corporation engaged, as "Etablissements Rigaud, Inc.," in buying domestically and importing from Etablissements Rigaud, S. A., in Paris, certain essential and necessary ingredients for manufacture of perfumes, and in mixing with domestic alcohol such ingredients and making same into perfumes at its place of business in New York City, and in sale and distribution thereof as hereafter indicated, and second New York corporation which was engaged as sales agent for the former in sale and distribution of perfumes made and compounded by it as aforesaid, and which, in conduct of its business and with knowledge that perfumes made by said Etablissements Rigaud, Inc., were of domestic manufacture, represented and sold, through its salesmen, as imported, such perfumes to retailers throughout the United States and in the District of Columbia;

In advertising their products through price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers among the various States and in said District, and through newspapers and periodicals of general circulation as aforesaid, and acting together and in cooperation with one another in the matters below set forth—

(*a*) Labeled perfume and carton in which packed with words "Paris—Igora—Rigaud," and also set forth on containers of said perfume words "Eau De Toilette" and "Un Air Embaume, Rigaud, Paris," and on carton, in addition to labeling aforesaid, legend "R. Rigaud, Paris-New York";

(*b*) Placed on their letterheads, statements, invoices, and other business stationery, as case might be, "Established in 1849 E. Fougera & Company, Inc. Parfumerie Division," followed by New York address, and words "Sole Importer Rigaud-Parfumeur, 16 Rue De la Paix, Paix, Paris," and "Etablissements Rigaud Inc., 8, Rue Vivienne, Paris, 16, Rue de la Paix. R Rigaud Paris-France. Successor to Parfumerie Rigaud, Inc., Laboratoire De Pharmacologie Inc., followed by New York address; and

(*c*) Made such statements, in their advertisements in newspapers and periodicals of general circulation as aforesaid, as "Un Air Embaume $6 an ounce Rigaud, Paris $1.15 purse flacon";

Notwithstanding fact said Etablissements Rigaud, Inc., was not, as thus represented, a French firm with foreign office, and their said products were not, as aforesaid represented, made in France or in any other foreign country, but were domestic products made in the United States by blending domestic and imported ingredients;

With tendency and capacity, through use of statements and representations made by it as aforesaid, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that their said products were made and compounded in France and imported into the United

States, as long preferred by substantial part of consuming public, and with result, as consequence of such belief, that purchasing public bought substantial portion of their products and trade was diverted unfairly to them from their competitors who truthfully represent country or source of origin of products made, sold, and distributed by them; to the substantial injury of competition in commerce:

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

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

Mr. S. Brogdyne Teu, II 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 Etablissements Rigaud, Inc., and E. Fougera & Co., Inc., corporations, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in the 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 Etablissements Rigaud, 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 at 79 Bedford Street, city of New York, State of New York. This respondent has been for more than 1 year last past engaged in the compounding, sale, and in the distribution of perfumes.

Respondent E. Fougera Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 75 Varick Street, city of New York, State of New York. It has been for more than 1 year last past engaged in the sale and distribution of perfumes compounded by the respondent Etablissements Rigaud, Inc. It is and acts as a sales agent for the respondent Etablissements Rigaud, Inc. in the sale and distribution of said perfumes to retail dealers purchasing for resale.

In doing the acts and things hereinafter alleged said respondents have acted together and in cooperation with each other.

In the course and conduct of their businesses the respondents offer for sale and sell said products in commerce between and among the

several States of the United States and in the District of Columbia to retail dealers purchasing for resale located at various points throughout the United States. When said products are sold respondents cause the same to be transported from their place of business in the State of New York to the purchasers thereof located at various points in the several 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 course of trade in said products in said commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents are, and for more than 1 year last past have been, engaged in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution, or engaged in the manufacture and 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. 3. Respondent Etablissements Rigaud, Inc. buys domestically and imports from Etablissements Rigaud, S. A., Paris, France, the essential and necessary ingredients for the manufacture of perfumes. These ingredients are made into perfumes at 79 Bedford Street, in the city of New York, State of New York. These perfumes are shipped throughout the United States to the account of respondent E. Fougera & Co., Inc. and represented to said respondent E. Fougera & Co., Inc. as being imported perfumes.

Respondent E. Fougera & Co., Inc. in the course and conduct of its business, and with the knowledge that the perfumes made by respondent Etablissements Rigaud, Inc. are of domestic manufacture, through its salesmen represents and sells as imported perfumes the perfumes made by the said respondent Etablissements Rigaud, Inc. to retailers purchasing them for resale and located throughout the United States and in the District of Columbia. The said salesmen of respondent E. Fougera & Co., Inc. upon securing an order for the perfumes manufactured by Etablissements Rigaud, Inc. forward said order directly to respondent Etablissements Rigaud, Inc. who ships the perfumes directly to the retailer purchasing for resale, charges the account of E. Fougera & Co., Inc. for the purchase price of the perfumes so sold, and thereafter collects from the respondent E. Fougera & Co., Inc. for the total purchase price of the perfumes so sold and distributed.

PAR. 4. Respondents, in soliciting the sale and in selling their products, and for the purpose of creating a demand on the part of the consuming public for said products, have advertised their products through the media of price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers located in the various States of the United States and in the District of Columbia. They have also advertised their commodities in newspapers and magazines having a general circulation throughout the United States.

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 products sold and distributed.

PAR. 5. The said price lists, advertisements, and other printed matter published and distributed by respondents as aforesaid contain misleading descriptions and misrepresentations concerning their products. Certain of the perfumes of respondents have printed on the carton thereof or on the labels thereof the following words and phrases:

I Rigaud
G
O
Paris R
A

On the bottom of the container on which the above words appear is a label upon which the following words and phrases in exceptionally small type appear:

RIGAUD—Paris—New York
Packaged in New York

On the carton in which is packed the perfume container on which the above appears, the following labeling appears:

R
RIGAUD
Paris—New York

Eau De Toilette

The above words appear on a label attached to the neck of the container while on the label appearing near the base of the container appear the following:

Un Air Embaumé
Rigaud
Paris

On their letterheads, statements, invoices and other business stationery the respondents have placed the following statements:

(1)

Established 1849
E. FOUGERA & COMPANY, Inc.
Parfumerie Division
79 Bedford St. at Barrow St.
New York
Sole Importer RIGAUD—PARFUMEUR, 16 Rue de la Paix, Paris

(2)

ETABLISSEMENTS RIGAUD, Inc.
8, Rue Vivienne
16, Rue de la Paix
PARIS

Successor to
Parfumerie Rigaud, Inc.
Laboratoire De Pharmacologie, Inc.

R
RIGAUD
Paris—France
79 Bedford St., New York

The respondents have also made certain representations in advertisements inserted in newspapers and magazines having a general interstate circulation, of which the following is representative:

UN AIR EMBAUMÉ

$6 an ounce
$1.15
purse flacon

Rigaud, Paris

The aforesaid representations and descriptions in the French language appearing on the aforesaid articles and their containers and the name of the corporate respondents appearing in French, as well as Parisian addresses and other representations in the French language used by and appearing on the respondents' business stationery, as aforesaid, and in advertisements inserted in newspapers and magazines, as aforesaid, serve as representations to and lead purchasers and prospective purchasers of respondents' products into the erroneous and mistaken belief that the commodities so described and referred to are made in France and imported into the United States.

In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made in the United States from foreign and domestic ingredients.

PAR. 6. For many years a substantial part of the consuming public has had, and still has, and so expressed the marked preference for perfumes which are manufactured in foreign countries, especially in France, and then imported into the United States.

PAR. 7. There are among the competitors of the respondents, manufacturers and distributors of like and similar products who advertise and represent the nature, merit, and origin of their respective products and who refrain from advertising or representing through advertisements, price lists, and other printed matter that the products offered for sale by them have a value, merit, or origin that they do not have.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the products 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 erroneously and mistakenly believe that the various articles of perfume herein described are manufactured in France and imported into the United States.

PAR. 9. The aforesaid false and misleading statements and representations on the part of the respondent have induced, and still induces, a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by the respondents on account of the aforesaid erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to the respondents from their competitors engaged in similar businesses. As a consequence thereof substantial injury has been, and is being, done to respondents' competitors 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 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 15, 1938, issued and served its complaint in this proceeding upon respondents Etablissements Rigaud, Inc., and E. Fougera & 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 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 Walter L. Post, attorney for the respondents, before Edward E. Reardon, 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 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. Respondent Etablissements Rigaud, Inc., is a New York corporation. It has its principal office and place of business at 79 Bedford Street, New York, N. Y. It has been for some time past engaged in the compounding, sales, and distribution of perfumes.

Respondent E. Fougera & Co., Inc., is a New York corporation. It has its principal office and place of business at 75 Varick Street, New York, N. Y. It has for some time past been engaged in the sale and distribution of perfumes made and compounded by respondent Etablissements Rigaud, Inc. It is, and acts as, sales agent of the respondent Etablissements Rigaud, Inc., in the sale and distribution of said perfumes to retail dealers purchasing for resale. In doing the acts and things hereafter set forth, the respondents have acted together and in cooperation with each other.

In the conduct of their business the respondents offer for sale and sell their products in commerce between and among the several States of the United States and in the District of Columbia to retail dealers purchasing the respondents' products for resale. The retail dealers are located at various points throughout the United States. When the products are so sold the respondents cause them to be transported from their place of business in the State of New York to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. There has been for some time past, and there still is, a course of trade in the respondents' products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the conduct of their business the respondents are and have been for some time past engaged in substantial competition with other corporations and with partnerships, firms, and individuals, 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. 3. Respondent Etablissements Rigaud, Inc., buys domestically and imports from Etablissements Rigaud, S. A., Paris, France, certain essential and necessary ingredients for the manufacture of perfumes. These imported ingredients are mixed with domestic alcohol and made into perfumes at 79 Bedford Street, New York, N. Y. After these perfumes are manufactured they are shipped throughout the United States to the account of E. Fougera & Co., Inc.

Respondent E. Fougera & Co., Inc., in the conduct of its business, and with the knowledge that the perfumes made by respondent Etablissements Rigaud, Inc., are of domestic manufacture, through its salesmen represents and sells as imported perfumes, the perfumes made by respondent Etablissements Rigaud, Inc., to retailers purchasing them for resale and located throughout the United States and in the District of Columbia. The salesmen of respondent E. Fougera & Co., Inc., upon securing an order for the perfumes manufactured by Etablissements Rigaud, Inc., forward said order directly to respondent Etablissements Rigaud, Inc. The respondent Etablissements Rigaud, Inc., then ships the perfumes directly to the retailers purchasing for resale, charges the account to E. Fougera & Co., Inc., for the purchase price of the perfumes so sold, and thereafter collects from the respondent E. Fougera & Co., Inc., for the purchase price of the perfumes so sold and distributed.

PAR. 4. The respondents, in soliciting the sale of and selling their perfumes and for the purpose of creating a demand on the part of the consuming public for their products, have advertised their products through the media of price lists, catalogs, labels, and other printed matter issued and circulated among customers and prospective customers located in the various States of the United States and in the District of Columbia. They have also advertised their products in newspapers and magazines having a general circulation between and among the various States of the United States and in the District of Columbia. In the manner just detailed the respondents have made to the general public false and misleading statements with reference to the products sold and distributed by them.

PAR. 5. Respondents have caused certain of the perfumes sold by them to be labeled as follows:

Paris—IGORA—Rigaud

The same inscription appears on the carton in which the perfume is packed.

The words "Eau De Toilette" appear on a label attached to the neck of the perfume container, while another label attached to the container near its base bears the following inscription:

Un Air Embaume
Rigaud
Paris

The carton in which the perfume container is packed bears the following label:

R
RIGAUD
Paris—New York

Respondents have placed the following statements on their letterheads, statements, invoices and other business stationery:

(1) Established 1849
E. FOUGERA & COMPANY, Inc.
Parfumerie Division
79 Bedford St. at Barrow St.
New York
Sole Importer RIGAUD-PARFUMEUR, 16 Rue
De la Paix, Paix, Paris

(2) ETABLISSEMENTS RIGAUD Inc.
8, Rue Vivienne PARIS
16, Rue de la Paix

R RIGAUD Paris-France	Successor to Parfumerie Rigaud Inc. Laboratoire De Pharmacologie Inc.

79 Bedford St., New York

The respondents have also caused advertisements to be inserted in newspapers and magazines having a general circulation between and among the various states of the United States and in the District of Columbia of which the following is representative:

UN AIR EMBAUME
$6 an ounce Rigaud, Paris
$1.15
purse flacon

Each and all of the representations and descriptions in the French language appearing on respondents' products and in respondents' newspaper and magazine advertisements, the Parisian addresses and other representations in the French language appearing on respondents' business stationery, as hereinabove set forth, serve as representations to the purchasing public that respondent Etablissement Rigaud, Inc., is a French firm with its headquarters in France, and that respondents' perfumes are made in France and imported into this country.

In truth and in fact, respondent Etablissements Rigaud, Inc., is not a French firm and has no foreign office. Respondents' products are not manufactured in France or in any other foreign country, but are domestic products made in the United States by blending domestic and imported ingredients.

PAR. 6. For many years a substantial part of the consuming public has had a preference for perfumes which are manufactured in foreign countries, especially in France, and then imported into the United States.

PAR. 7. The use of the statements and representations made by respondents as herein set out, in connection with the sale and distribution of their products, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said products are made or compounded in France and imported into the United States.

As a result of this mistaken and erroneous belief, the purchasing public have purchased a substantial portion 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, who truthfully represent the country or source or 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 respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral arguments by S. Brogdyne Teu, II, counsel for the Commission, and Walter L. Post, 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 the Federal Trade Commission Act.

It is ordered, That the respondents Etablissements Rigaud, Inc., and E. Fougera & Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of perfumes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Paris," or "Paris, France" or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes which are made or compounded in United States are made or compounded in France or in any other foreign country; provided however that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

2. Using any French or other foreign terms or words, except as provided in paragraph 3 hereof, to designate, describe, or in any way refer to perfumes made or compounded in the United States, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

3. Using the terms "Un Air Embaume," "Rigaud," "Igora," or any other French or other foreign words or terms as brand or trade names for perfumes made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded 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.

IN THE MATTER OF

PARFUMS CORDAY, INCORPORATED

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

Docket 3639. Complaint, Oct. 28, 1938—Decision, Sept. 27, 1939

Where a domestic corporation engaged, as "Parfums Corday, Incorporated," in sale and distribution of perfumes, toilet waters, and other cosmetic preparations, which were made into finished perfumes in the United States through addition of alcohol and other necessary ingredients to the perfume concentrates or other essentials imported from France or other foreign countries, and which, after being thus made and delivered to it, were by it packaged and advertised and thereafter sold and distributed to retail dealers throughout the United States—

Represented, through such words as "Paris, France," "Voyage a Paris," "Orchidee Bleue," "Toujours Moi," and other French words, and statements such as "Voyage a Paris, Le Parfum et l'Eau de Cologne Corday, 15 Rue de la Paix, Paris," "Orchidee Bleue * * * Toujours Moi * * * Quand * * * Voyage a Paris * * *," and "* * * Corday, famous French parfumeur * * * offers you these memorable parfums * * *," etc., in its advertising and price lists and on its labels, that the perfumes, toilet waters, and other cosmetic preparations sold and distributed by it were made in France and imported into the United States, facts being they were, as aforesaid, made in this country from imported ingredients, processed as above set forth;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous and mistaken belief that such products were made in France and imported into the United States, for which, as made abroad, there is preference on part of buying public, and particularly for the higher-priced French products, and with result, as consequence of such erroneous and mistaken belief, that number of purchasing public bought substantial portion of its products and trade was diverted unfairly to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of perfumes, and who truthfully represent the country or source of origin of their products; to the substantial injury of competition in commerce:

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

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

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Joseph L. Hochman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Parfums Corday, Inc., hereinafter referred to as respondent, has violated the provisions of the 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. Parfums Corday, Inc., is a corporation created by and existing under the laws of the State of New York with its principal office and place of business located at 485 Fifth Avenue, city of New York, State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing perfumes. Respondent causes said products when sold to be transported from its place of business in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained a course of trade in said perfumes sold and distributed by it in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged 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. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said products, respondent has made representations concerning the character of said products by means of advertising folders and price lists disseminated in said commerce, and by means of advertisements inserted in magazines and newspapers having an interstate circulation. Among said representations made by respondent are the following:

Voyage a Paris, Le Parfum et l'Eau de Cologne CORDAY, 15 Rue de La Paix, Paris.

Corday, 15 Rue de La Paix, Paris, toujours moi "Always Me," orchidee bleue "Blue Orchid."

Each of these Corday odors has a haunting meaning of its own—stimulating to the senses and gladsome to the soul * * * their witchery enhanced by lingering, lasting eloquence. Corday, famous French parfumeur * * * offers you these memorable parfums to endow you with an exciting glamour * * * to lend fond memory to precious moments.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products. In all of its advertising literature and through other means and other statements of similar import and effect, respondent directly or by inference represents that the perfume, toilet water, and other cosmetic preparations sold and distributed by it are manufactured in France and imported into the United States.

PAR. 5. The representations made by respondent with respect to the character of its products are grossly exaggerated, misleading, and untrue. In truth and in fact the perfumes, toilet water and other cosmetics sold and distributed by respondent are not imported from France or any other foreign country into the United States but are manufactured from essential ingredients imported from France into the United States. Further, in truth and in fact a concern, to wit, Empress Cosmetics, Inc., imports from France into the United States the essential ingredients of perfumes, flower essence, musk, and aromatic chemicals. After these essential ingredients are imported into the United States, Empress Cosmetics, Inc., makes them into perfume by the addition of alcohol. Thereafter, Empress Cosmetics, Inc., delivers the perfume so manufactured in bulk to the respondent, Parfums Corday, Inc. The respondent, Parfums Corday, Inc., packages and advertises the perfume received from Empress Cosmetics, Inc., and thereafter sells and distributes it to retail dealers throughout the United States.

PAR. 6. There is a preference on the part of the buying public for perfumes which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes and cosmetics manufactured in France, and such goods so manufactured and imported command and bring from the purchasing public a higher price in the markets of the United States than domestic perfumes and cosmetics of the same nature and description.

PAR. 7. There are among respondent's competitors many who manufacture, distribute and sell perfumes who do not in any way misrepresent the character of their products.

PAR. 8. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic.

PAR. 9. The acts and practices of the respondent in using said false statements and representations in designating and describing its products, and the dissemination of said false advertisements in said commerce in connection with the sale and distribution of said products

as above alleged, have had and now have a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the erroneous belief that all of said representations are true, and that respondent's said products are imported from France. As a direct result of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's products with the effect that trade has been diverted unfairly to respondent from its competitors likewise engaged in the business of distributing and selling perfumes, who truthfully advertise and represent their products. As a consequence thereof, injury has been done and is now being done by respondent to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and to the respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 28, 1938, issued and, on October 29, 1938, served its complaint in this proceeding upon respondent, Parfums Corday, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 Joseph L. Hochman, attorney for the respondent, before Edward E. Reardon, 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 allegations of the complaint and in opposition thereto (respondent not having requested oral argument) 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. Parfums Corday, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 485 Fifth Avenue, New York, N. Y.

PAR. 2. The respondent is now, and for some time past has been, engaged in selling and distributing perfumes, toilet waters, and other cosmetic preparations. When sold, the respondent causes its products to be transported from its place of business in the State of New York to customers located throughout the United States and in the District of Columbia.

The respondent maintains, and has maintained for some time past, a course of trade in said products sold and distributed by it in commerce throughout the United States and in the District of Columbia.

PAR. 3. In the conduct of its business the respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes, toilet waters, and other cosmetic preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the conduct of its business and for the purpose of inducing the purchase of its products, the respondent made representations concerning the character of its products by means of labels, advertising, folders, price lists, and by means of advertisements inserted in magazines and newspapers all of which were circulated between and among the various States of the United States and the District of Columbia. Among the representations just referred to and made by the respondent the following are representative:

Voyage a Paris, Le Parfum et l'Eau de Cologne CORDAY, 15 Rue de La Paix, Paris.

Corday, 15 Rue de La Paix, Paris, toujours moi "Always Me," orchidee bleue "Blue Orchid."

Each of these Corday odors has a haunting meaning of its own—stimulating to the senses and gladsome to the soul * * * their witchery enhanced by lingering, lasting eloquence. CORDAY, famous French parfumeur * * * offers you these memorable parfums to endow you with an exciting glamour * * * to lend fond memory to precious moments.

Extrait Luxe—604. "ORCHIDEE BLEUE" CORDAY. Contenance: 110 cmc. environ.

CORDAY PERFUME WARDROBE (LIONETTE). Containing 1/12 Orchidee Bleue, 1/12 Toujours Moi, 1/12 Quand, 1/12 Voyage A Paris, 1/12 Gardenia STOCK no. 795.

All of the above statements, together with similar statements appearing in respondent's advertising literature, price lists and on its

labels, purport to be descriptive of respondent's products. In all of its advertising literature and by other means through the statements and representations herein set out and through other statements of similar import and effect, the respondent has directly and indirectly represented that the perfumes, toilet waters and other cosmetic preparations sold and distributed by it are manufactured in France and imported into the United States.

PAR. 5. The representations made by respondent herein set out, and other similar thereto not herein set out, with respect to the character of its products, are confusing, misleading, and untrue. The perfumes sold and distributed by respondent are not made in France or any other foreign country and imported into the United States; they are manufactured in the United States by Empress Cosmetics, Inc., from perfume concentrates or other essential ingredients imported from France or other foreign countries into the United States, where the perfume concentrate or other essential ingredients to which is added American and French alcohol are processed by Empress Cosmetics, Inc., by the addition of alcohol and other necessary ingredients into the finished perfumes. Empress Cosmetics, Inc., after making the perfumes from imported ingredients, delivers the perfumes to the respondent. The respondent packages and advertises the perfumes received from Empress Cosmetics, Inc., and thereafter sells and distributes them to retail dealers throughout the United States.

PAR. 6. There is a preference on the part of the buying public for perfumes which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes manufactured in France, and such goods command and bring from the purchasing public a higher price than domestic perfumes of the same nature and description.

PAR. 7. The use of the statements and representations made by the respondent, as herein set out in connection with the sale and distribution of its products, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are made in France and imported into the United States.

As a result of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial portion of respondent's products with the result that trade has been unfairly diverted to the respondent from its 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 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 respondent, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, testimony and other evidence taken before Edward E. Reardon, 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 by S. Brogdyne Teu, II, counsel for the Commission, and by Joseph L. Hochman, counsel for the respondent, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Parfums Corday, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its perfumes, toilet waters, and other cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Paris, France" or any other terms, words, symbols, or picturizations, indicative of French or other foreign origin of such products, or in any manner, that perfumes, toilet waters or other cosmetic preparations which are made or compounded in the United States are made or compounded in France or any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied with a statement that such products are made or compounded in the United States.

2. Using any French or other foreign terms or words, except as provided in paragraph 3 hereof, to designate, describe, or in any way refer to perfumes, toilet water, or other cosmetic preparations made or compounded in the United States unless the English translation or equivalent thereof appears as conspicuously and in immediate connection therewith.

3. Using the terms "Voyage a Paris," "Orchidee, Bleue," "Toujours Moi," or any other French or other foreign words or terms as brand or trade names for perfumes, toilet waters or other cosmetic preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and in conjunction therewith that such products are made or compounded in the United States.

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

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

MODIFYING CEASE AND DESIST ORDER

Docket 1442. Order, September 28, 1939

Order modifying on Commission motion prior cease and desist order entered against said respondent in Docket 1442, March 14, 1932, 16 F. T. C. 81, so as to prohibit, as below set forth, use of word "Havana" in connection with offer, sale, and distribution of cigars.

Mr. Marshall Morgan for the Commission.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of Richard P. Whiteley, Assistant Chief Counsel for the Commission to modify the order to cease and desist heretofore issued in this proceeding on March 14, 1932, 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, as issued herein on March 14, 1932, be, and the same hereby is, granted as prayed;

It is further ordered, That the order to cease and desist issued herein on March 14, 1932, be, and the same hereby is, modified so as to read as follows:

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

It is now ordered, That respondent T. E. Brooks, doing business under the trade name and style, T. E. Brooks & Co., his agents, individual or corporate, representatives, servants, employees, and successors in business, on and after 2 years and 30 days from August 10, 1939, in connection with the offering for sale, sale, and distri-

bution of cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from:

Using the word "Havana" or any other word or words, terms or picturization indicative of Cuban origin, or descriptive of Cuba, alone or in conjunction with any other word or words to describe, designate, or in any way to refer to cigars which are not made entirely from tobacco grown on the Island of Cuba.

It is further ordered, That within the period of 2 years and 30 days from August 10, 1939, the respondent T. E. Brooks, doing business under the trade name and style, T. E. Brooks & Co., be, and is hereby directed and ordered to file with the Federal Trade Commission a report in writing setting forth with particularity the manner in which he has complied with the terms of this order.

IN THE MATTER OF

INTERNATIONAL UNIVERSITY OF COMMERCE, AND PAUL V. MANNING

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

Docket 3543. Complaint, Aug. 17, 1938—Decision, Sept. 29, 1939

Where a corporation and an individual, who was president and principal stockholder thereof and general manager of the business which it conducted, engaged in sale and distribution of correspondence courses in bookkeeping, accountancy, auditing, commercial law, and business administration, to pupils in various States, in active competition with others engaged in sale and distribution of like and similar courses of instruction as aforesaid, and including many who do not misrepresent the courses which they offer and sell; in soliciting sale of their courses of instruction—

(*a*) Displayed and featured on all their stationery and advertising material, name of said corporation, in which was included word "University," notwithstanding fact school in question did not maintain a faculty or have a staff of instructors and was not an educational institution organized for teaching and study in the higher branches of learning, imparting education embracing many branches, and empowered to confer degrees, etc., as understood by public, but instruction furnished was given solely by one certified public accountant with title of Educational Director, and with aid of assistant who was senior, but not certified, public accountant, and who directed school's educational work and examined and corrected papers, etc., and devoted only portion of his time to school in question;

(*b*) Represented that opportunities in the field of accounting open to students finishing their course were unlimited, and that course sold by them was superior to similar courses of competitors, and that their school was largest of its kind in the United States; and

(*c*) Represented that they were connected with a large firm of accountants and had trained thousands of accountants, majority of whom were holding responsible positions with some of the largest industrial units in the country, and that, in event students who had completed the course should not be able to obtain employment elsewhere, they would be placed with Chicago firm with which school was closely connected, and for which it, as asserted, was in reality engaged in training personnel so that such firm might have sufficient number of trained accountants on hand from which to replenish its force, as depleted through continual resignations of members to accept higher paid positions with industrial firms, and in response to nation-wide demands for trained accountants; and

(*d*) Represented that the presidents of General Motors and Chrysler Corporations had urged all clerical employees of their respective companies to take advantage of their said course;

Facts being opportunities in field in question for students finishing such course were not unlimited, course was not superior to competitors' nor was school largest of its kind as aforesaid, they were in no way connected with large

firm of accountants, none of the executives of said companies or corporations had made such a recommendation, and their said course was not offered only to a select group;

With capacity and tendency to confuse, mislead, and deceive members of public through such representations, and to induce them to subscribe to course of instruction in erroneous belief that school in question was in fact a university, and that said representations were true, and with result that, as direct consequence, patronage was diverted unfairly to them from schools of competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of public and competitors and constituted unfair and deceptive acts and practices in commerce.

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

Mr. C. S. Cox and *Mr. Merle P. Lyon* for the Commission.

Mr. Raymond B. Morris, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that International University of Commerce, a corporation, and Paul V. Manning, individually and as president of International University of Commerce, hereinafter referred to as respondents, have violated the provisions of the 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, International University of Commerce, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 612 North Michigan Avenue, Chicago, Ill. Respondent Paul V. Manning is the principal stockholder of the respondent corporation, and as such, dominates and controls the sales policies and business activities of the corporate respondent.

PAR. 2. Respondents are now, and for more than 7 years last past have been, engaged in the business of conducting a correspondence school and in the sale and distribution of a correspondence course consisting of instructions in bookkeeping, accountancy, auditing, commercial law, and business organization, in commerce, between and among the various States of the United States and in the District of Columbia. Respondents cause their said correspondence course, when sold, to be transported from their office and place of business in the State of Illinois to purchasers of said course in States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 3. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said correspondence course sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business respondents are in active and substantial competition with other corporations and individuals, and with firms and partnerships engaged in the sale and distribution of correspondence courses in commerce between and among various States of the United States and in the District of Columbia.

PAR. 5. A "University" is understood by the public to be an educational institution organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches such as arts, sciences, and all manner of learning and which is empowered to confer degrees, with a faculty of learned persons acting as instructors and offering one or more special branches of learning such as theology, law, and medicine.

PAR. 6. Said respondents, in soliciting the sale of and in selling their said course of study and instruction, and for the purpose of inducing the purchase of said course of instruction in commerce as aforesaid, have caused the name of corporate respondent, International University of Commerce, to appear in a prominent and conspicuous manner on all of their stationery and advertising material and have made many representations to prospective students, both directly and through their representatives, among which representations are the following:

1. That respondents' school has "instructors," a "faculty," and a staff of certified public accountants.

2. That the opportunities in the field of accountancy open to students finishing respondents' course of instruction, are unlimited.

3. That the course of instruction offered by respondents is superior to those of their competitors.

4. That the respondents' school is the largest of its kind in the United States.

5. That the respondents have trained thousands, the majority of whom are holding responsible positions with some of the largest industrial units in the country.

6. That students completing the course of instruction offered by respondents will be given positions or jobs.

7. That the respondents' course is endorsed and recommended by Henry Ford, Alfred P. Sloan, Jr., and Walter P. Chrysler.

8. That the respondents' course is only offered to a select group.

9. That the respondents are connected with a large firm of accountants.

And statements and representations of similar import.

PAR. 7. In truth and in fact, respondents' school is not a university. It does not have a faculty, nor a staff of instructors, and does not have a staff of certified public accountants. The opportunities in the field of accountancy for students finishing the course of instruction offered by respondents are not unlimited, nor is respondents' course superior to those of their competitors. Respondents' school is not the largest of its kind in the United States. The majority of those trained by respondent are not holding responsible positions with some of the largest industrial units in the country. Persons completing the course of instruction offered by respondents are not given positions or jobs. Respondents' course is not endorsed or recommended by Henry Ford, Alfred P. Sloan, Jr., or Walter P. Chrysler, nor is respondents' course offered only to a select group, but the true facts are that respondents will sell their course to any person who will pay for same. Respondents are not connected with a large firm of accoutants.

PAR 8. There are among the competitors of respondents many who do not misrepresent their respective courses of study and instruction.

PAR. 9. The foregoing representations made by respondents through the use of corporate respondent's corporate name and through other means in offering for sale and selling their course of study and instruction, have had and now have the tendency and capacity to, and do in fact, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true. As a direct result of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial volume of respondents' course, with the result that trade has been diverted unfairly to respondents from competitors engaged in the sale of similar or other courses of instruction who do not misrepresent their said courses. As a consequence thereof injury has been, and is now 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. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1938, issued and served its complaint in this proceeding upon respondent International University of Commerce, a corporation, and Paul V. Manning, individually and as president of International University of Commerce, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission and in opposition to the allegations of the complaint by Raymond B. Morris, attorney for the respondents, before W. 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, brief in support of the complaint (respondents not having filed brief), oral argument not having been requested; and the Commission having duly considered the matter and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, International University of Commerce, is a corporation organized in June 1931, under the laws of the State of Illinois with principal place of business in Chicago, in said State. On August 1, 1938, its corporate name was changed to International School of Commerce. Since its organization, it has been engaged in the business of conducting a school which has sold and distributed courses of instruction in bookkeeping, accountancy, auditing, commercial law, and business administration, which courses have been given by correspondence to pupils in various States of the United States. It has caused the lesson material included in such courses, when sold, to be transmitted by the United States mail from its place of business in Chicago, Ill., through and into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business said respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale and distribu-

tion of like or similar courses of instruction by correspondence, in commerce between and among various States of the United States. The respondent, Paul V. Manning, is the principal stockholder of the respondent, International School of Commerce and its president and the general manager of the business conducted by it.

PAR. 2. The name of the corporate respondent prior to August 1, 1938, included the word "University." As understood by the public a university is an educational institution organized for teaching and study in the higher branches of learning, in which the education imparted is universal, embracing many branches, such as arts, sciences, and all manner of learning, and which is empowered to confer degrees, with a faculty of learned persons acting as instructors and offering instruction in one or more branches of learning such as theology, law, and medicine. The school conducted by respondent is not a university. It does not have a staff of instructors and the instruction received by persons who purchase the course of instruction offered for sale by respondents is given solely by one certified public accountant, who has the title of educational director for such school, and with the aid of one assistant who is a senior accountant but not a certified public accountant, directs all the educational work of such school and examines and corrects the papers sent in by students and handles all letters of inquiry from students which pertain to accounting problems which arise in the study of the course by the several students. He does not devote his whole time to such school but has outside employment to which he devotes a portion of his time.

PAR. 3. The respondents, in soliciting the sale of the course of instruction given by them, and in the sale of same, as set out in Paragraph 1 hereof, and for the purpose of inducing members of the public to purchase such course, prior to August 1, 1938, caused the name of the corporate respondent, "International University of Commerce" to be printed in a prominent and conspicuous manner on all their stationery and advertising material, and both prior to and since August 1, 1938, have made numerous representations to prospective students concerning the course of instruction sold by them, both directly and through their representatives, among which were representations to the effect that the opportunities in the field of accounting open to students finishing said course were unlimited; that such course was superior to the courses sold by competitors; that the school conducted by respondents was the largest of its kind in the United States; that respondents were connected with a large firm of accountants; that such school had trained thousands of accountants, the majority of whom were now holding responsible positions with

some of the largest industrial units in the country; that in the event students who had completed the course should not be able to obtain employment elsewhere they would be placed with a firm of accountants in Chicago with which the school conducted by respondents was closely connected; that such school in reality was engaged in training personnel for such accounting firm; that there was a nation-wide demand for trained accountants and on that account members of the staff of the accounting firm were continually resigning and accepting higher paying positions with industrial firms and that it therefore became necessary for the firm to maintain the school in order to have a sufficient number of trained accountants on hand from which to replenish its force; that Alfred P. Sloan, Jr., president of General Motors, and Walter P. Chrysler, president of the Chrysler Company, had urged all clerical employees of their respective companies to take advantage of the course offered by respondents. These representations were false, misleading, and deceptive in that the school conducted by respondents is not a university and the opportunities in the field of accountancy for students finishing the course of instruction sold by respondents were not unlimited, nor is such course of instruction superior to those sold by competitors of respondents; the school conducted by respondents is not the largest of its kind in the United States, and respondents are in no way connected with a large firm of accountants; none of the executives of the General Motors or Chrysler Corporation had recommended that any of the employees of their respective companies should take advantage of the course of instruction sold by respondents; and respondents' course is not offered only to a select group.

PAR. 4. There are among the competitors of respondents many who do not misrepresent the respective courses of instruction offered for sale and sold by them and the use by respondents of stationery and advertising material on which was printed the former name of the corporate respondent, as set out in paragraph 3 hereof, and the use by respondents of the representations concerning the school conducted by respondents and the course of instruction offered for sale and sold by them, as set out in paragraph 3, have had the capacity and tendency to confuse, mislead, and deceive members of the public and to induce them to subscribe to said course of instruction in the erroneous belief that the school conducted by respondents was in fact, a university and that said representations were true, and as a result patronage has been diverted unfairly to respondents from schools conducted by competitors of respondents.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices 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 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 the complaint and in opposition thereto, brief filed by attorney for the Commission (respondents not having filed brief) and oral argument not having been requested, 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 International University of Commerce, whose name has been changed to International School of Commerce, its officers, representatives, agents, and employees, and Paul V. Manning, individually and as president of said corporate respondent, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of courses of instruction by correspondence in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly;

(*a*) Through the use of the word "University," or any other word or words of similar import or meaning, in the name of the corporate respondent, or through any other means or device or in any manner, that said respondents conduct a university or institution of higher learning.

(*b*) That the respondents maintain a faculty or have a staff of instructors or a staff of certified public accountants.

(*c*) That the opportunities in the field of accountancy for students finishing the course of instruction offered by respondents are unlimited.

(*d*) That respondents' course is superior to those of competitors.

(*e*) That respondents' school is the largest of its kind in the United States.

(*f*) That the majority of those trained by respondents are holding responsible positions with some of the largest industrial units in the country.

(*g*) That respondents will procure employment for persons completing their course of instruction.

(*h*) That respondent's course of instruction is endorsed by Alfred P. Sloan, Jr., Walter P. Chrysler, or any other person, or that such employers have urged clerical employees to take advantage of respondents' course of instruction unless and until such are the true facts.

(*i*) That respondents' course is offered only to a select group.

(*j*) That respondents are connected with a firm of accountants.

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

IRVING SOFRONSKI, TRADING AS DR. RON-AL MEDICINE COMPANY, DR. PENN'S PRODUCTS COMPANY, AND PENN PRODUCTS

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

Docket 3848. Complaint, July 13, 1939—Decision, Oct. 3, 1939

Where an individual engaged, as "Dr. Ron-Al Medicine Company," in sale and distribution of his "Dr. Ron-Al's Relief Compound" to purchasers in other States and in the District of Columbia; in advertisements which he disseminated through the United States mails, newspapers, and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and otherwise, and which were intended and likely to induce purchase of his said medicinal preparation—

(*a*) Represented that his said "Dr. Ron-Al's Relief Compound" was a competent and effective remedy for delayed menstruation, and that it was absolutely harmless and would accomplish results without pain or delay, facts being said preparation was composed of ergotin, aloes, oil savin, extract cotton wood bark, extract black hellebore, and iron sulphate, dried, and was not a competent, safe, or scientific treatment for delayed menstruation, and would not accomplish results without pain or delay, and use thereof, under conditions prescribed in advertisements in question, or under such conditions as are customary and usual, might result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and, where used to interfere with the normal course of pregnancy, might also result in uterine infection with extension to other pelvic and abdominal structures and also to the blood stream, causing septicemia or blood poisoning, and use thereof constituted a menace to the health and life of pregnant women; and

(*b*) Failed to reveal, in advertisements disseminated as aforesaid, that use of said preparation, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of said public, because of such belief, to purchase his said preparation with injurious drugs therein contained:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. A. Lincoln Meyers, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Irving Sofronski, an individual, trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., and Penn Products, hereinafter referred to as respondent, has violated the provisions of the 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, Irving Sofronski, is an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., and Penn Products, residing at 7342 Ogontz Avenue, in the city of Philadelphia, State of Pennsylvania, from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for some time last past has been, engaged in selling, distributing and causing to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in other States and in commerce between and among the various States of the United States and in the District of Columbia, a certain medicinal preparation known as "Dr. Ron-Al's Relief Compound."

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation 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 the aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparation by United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation in commerce, as commerce is defined in the

Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Women of Today do not have to suffer monthly pain, and delay, due to cold, nervous strain, exposure, or other similar unnatural causes. Mrs. G. writes: "I received relief after twelve weeks of unnatural delay." Dr. Ron-Al's Relief Compound is effective, reliable, and gives quick relief. Don't suffer or be uncertain. Send today for this remedy.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparation known and designated as "Dr. Ron-Al's Relief Compound" is a competent and effective remedy for delayed menstruation; that said preparation is absolutely harmless and will accomplish results without pain or delay.

PAR. 5. In truth and in fact the medicinal preparation sold and distributed by the respondent, known as "Dr. Ron-Al's Relief Compound," is composed of ergotin, aloes, oil savin, extract cotton wood bark, extract black hellebore, and iron sulphate, dried, and is not a competent, safe, or scientific treatment for delayed menstruation and will not accomplish results without pain or delay. The use of said medicinal preparation, under the conditions prescribed in the said advertisements, or under such conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage. In those cases where this preparation is used to interfere with the normal course of pregnancy, such use may also result in uterine infection with extension to other pelvic and abdominal structures and also to the blood stream, causing the condition known as septicemia, or blood poisoning. The use of said medicinal preparation is a menace to the health and life of pregnant women.

PAR. 6. In addition to the representations hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparation, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, 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 and mistaken belief

that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation containing injurious drugs.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 13, 1939, issued, and on July 14, 1939, served its complaint in this proceeding upon the respondent, Irving Sofronski, an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., and Penn Products, charging him with the use of unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, Irving Sofronski, is an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., and Penn Products, residing at 7342 Ogontz Avenue, in the city of Philadelphia, State of Pennsylvania, from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for sometime last past has been, engaged in selling, distributing, and causing to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in other States and in commerce between and among the various States of the United States and in the District of Columbia, a certain medicinal preparation known as "Dr. Ron-Al's Relief Compound."

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation 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 the aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparation by United States mails, by insertions in newspapers, and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly the purchase of his said medicinal preparation; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Women of today do not have to suffer monthly pain, and delay, due to cold, nervous strain, exposure, or other similar unnatural causes. Mrs. G. writes: "I received relief after twelve weeks of unnatural delay." Dr. Ron-Al's Relief Compound is effective, reliable, and gives quick relief. Don't suffer or be uncertain. Send today for this remedy.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparation known and designated as "Dr. Ron-Al's Relief Compound" is a competent and effective remedy for delayed menstruation; that said preparation is absolutely harmless and will accomplish results without pain or delay.

PAR. 5. In truth and in fact the medicinal preparation sold and distributed by the respondent, known as "Dr. Ron-Al's Relief Compound," is composed of ergotin, aloes, oil savin, extract cotton wood bark, extract black hellebore, and iron sulphate, dried, and is not a competent, safe, or scientific treatment for delayed menstruation and will not accomplish results without pain or delay. The use of said medicinal preparation, under the conditions prescribed in the said advertisements, or under such conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and

vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage. In those cases where this preparation is used to interfere with the normal course of pregnancy, such use may also result in uterine infection with extension to other pelvic and abnormal structures and also to the blood stream, causing the condition known as septicemia, or blood poisoning. The use of said medicinal preparation is a menace to the health and life of pregnant women.

PAR. 6. In addition to the representations hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparation, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, 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 and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, Irving Sofronski, an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., and Penn Products, or trading under any other name or names, his agents,

servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of an emmenagogue preparation now known as Dr. Ron-Al's Relief Compound, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation which advertisements represent, directly or through implication, that the use of said medicinal preparation constitutes a safe, competent, or scientific treatment for delayed menstruation or that its use will have no ill effect upon the human body, and which advertisements fail to reveal that the use of said preparation may result in serious or irreparable injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order and if so, the manner and form in which he intends to comply; and that, within 60 days after service upon him of this order said respondent shall 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

MAGNECOIL 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 1846. Complaint, June 16, 1930—Decision, Oct. 6, 1939

Where a corporation engaged in manufacture of blankets and other appliances through which were run, or into which were woven, copper wires connected to an attachment for plugging into electric light sockets, and in sale and distribution of said appliances to purchasers in various other States, in substantial competition with others engaged in sale and distribution of devices, appliances, or treatments designed and used for purposes for which it recommended its said products; in advertising its said appliances in newspapers, periodicals, and other publications of general circulation—

(*a*) Represented that use thereof as cover for the body, or portion thereof, would benefit, cure, and prevent diseases and bodily defects and ailments, many of which were specified by name, and that its said appliances constituted discoveries in field of electrotherapeutics and were based upon, and made practical, application of various scientific discoveries and theories of well-known scientists, etc., and, used as directed, set up radiomagnetic energy and a thermo-electromagnetism which was transmitted to user and caused increased activity in revitalizing of the organs and cells, charged blood stream with electromagnetic energy, and eliminated many times more poisons and waste than was otherwise possible, etc., with resulting cure of disease or ailment from which person might be suffering;

Facts being use of said products did not produce any radiomagnetic energy or thermoelectromagnetism which was transmitted to or had any effect on the body, or cause any results other than those produced as result of application of the heat generated in said products, and statements and representations made by it and attributing to said devices curative, remedial and therapeutic values other than those values resulting from application of heat, were false, and said products had no curative or therapeutic efficacy in treatment of human diseases, ailments, etc., apart from application of heat generated as aforesaid, which, as such, does not constitute competent or effective treatment for many of the diseases, etc., of the body, and in practically all cases is recognized by medical profession as affording temporary relief only;

(*b*) Represented that its said products were used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and had been tested and endorsed by them and by institutions for medical and scientific research;

Facts being said statements were false and said products had not been thus used, tested, etc., by reputable members of the medical profession;

(*c*) Represented that it had laboratories and an advisory and consulting board of medical experts for analysis and advice in cases where its products were being or to be used;

Facts being it did not maintain medical or therapeutic laboratory or clinic, and no recognized medical practitioner had ever been connected with its business; and

(*d*) Represented that it occupied a large building in which its products were manufactured and its business generally conducted;

Facts being it occupied space on one floor of the building only;

With effect of misleading and deceiving members of the purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of its products because of such belief, and with result that trade in commerce was thereby diverted unfairly to it from its competitors who do not falsely represent the therapeutic properties of their respective products:

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

Before *Mr. Ellis DeBruler* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Eugene W. Burr and *Mr. Joseph C. Fehr* for the Commission.

Ball & Musser, of Salt Lake City, Utah, for respondent.

Complaint

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

Paragraph 1. Respondent, Magnecoil Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. It is engaged in the business of manufacturing and selling, to persons located in various States of the United States, blankets and other appliances through which are run or into which are woven copper wire connected to an attachment for plugging into an electric light socket, and in causing said products, when so sold, to be transported from the place of manufacture through and into other States of the United States to the purchasers thereof. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in commerce between and among the various States of the United States.

PAR. 2. In order to induce the public to purchase its said products, respondent causes to be inserted in newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and in certain sections thereof, advertisements offering its said products for sale and soliciting the purchase thereof, and sends from its place of business in Salt Lake City, State of Utah, to purchasers and prospective purchasers living at points in various States of the United States, letters, pamphlets, booklets, and circulars concerning its said products and offering the same for sale. In the aforesaid advertisements and literature respondent causes to be set forth many false, misleading, and deceptive statements and representations to the effect:

(*a*) That said products when used as a cover for the human body or a portion thereof will benefit, cure, and prevent all diseases, ailments, and defects of the human body, a great many of which are specified by name in said advertisements and literature, and that such products constitute the greatest discoveries in the field of electrotherapeutics. Whereas in truth and in fact, respondent's said products have no curative or therapeutic value apart from and except because of the heat generated by the electric current passing over the wires of said products, that is, except as a heating pad, and will not benefit, cure, or prevent any of the various diseases, ailments, and defects of the human body.

(*b*) That said products are based upon and make practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and are the result of painstaking and long experience and tests. Whereas in truth and in fact, said products are not so based and make no practical application of any scientific discoveries or theories for the cure or prevention of human diseases or ailments.

(*c*) That the said products when used as respondent directs set up a radiomagnetic energy and a thermoelectromagnetism which is transmitted to the person using the appliance causing an increased activity and revitalizing of the organs and cells of the body and a charging of the blood stream with electromagnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body, with a resulting cure of any disease or ailment of which the person may be suffering. Whereas in truth and in fact, said products when so used do not produce any radiomagnetic or thermoelectromagnetism which is transmitted to or has any effect upon the human body, and do not cause any results other

than those which would be produced as a result of and because of the heat generated in the appliances.

(*d*) That said respondent occupies a large building in which its products are manufactured and its business generally conducted and that it has laboratories and an advisory and a consulting board of medical experts for analysis and advice in cases where respondent's products are being or are to be used. Whereas in truth and in fact, respondent occupies only a part of one floor in this building and has no laboratory or medical advisory or consulting board.

(*e*) That said products are used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research. Whereas in truth and in fact, said products are not and have not been so used, tested, endorsed, or recommended.

(*f*) Respondent makes other false, misleading, and deceptive statements and representations in its said advertisements and literature of like tenor and effect as the statements and representations in this paragraph above specifically set forth.

PAR. 3. The aforesaid false, misleading, and deceptive statements and representations made by respondent in its advertisements and literature have the capacity and tendency to and do cause many persons to purchase and use respondent's products in the belief that said statements and representations are true.

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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1930, issued and served its complaint in this proceeding upon the respondent, Magnecoil 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 the complaint were introduced by Eugene W. Burr, attorney for the Commission, before Ellis DeBruler, 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, respondent, through its attorney, Burton W. Musser, filed a motion to withdraw its answer and submitted a substitute answer, in which respondent waived all further proceeding and voluntarily consented that the Commission may make, enter and serve upon respondent an order to cease and desist from the method or methods of competition alleged in the complaint, which said motion was granted by the Commission, and which substitute answer was duly filed in the office of the Commission. Thereafter, on September 25, 1933, the Commission issued its order requiring respondent to cease and desist from the practices alleged in the complaint. Thereafter, on June 16, 1937, the Commission set aside said order to cease and desist and ordered the taking of further testimony. Thereafter, additional testimony and other evidence in support of the allegations of the complaint were introduced by Joseph C. Fehr, counsel for the Commission, before Miles Furnas, an examiner of the Commissioner theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Stipulations as to certain facts were made a part of the record herein by agreement of counsel for the respondent and counsel for the Commission and said stipulations 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, stipulations, and other evidence, and brief in support of the allegations of the complaint (respondent not having filed brief 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, Magnecoil Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. Respondent is engaged in the business of manufacturing, selling, and distributing blankets and other appliances through which are run or into which are woven copper wire connected to an attachment for plugging into electric light sockets. Respondent causes said products when sold by it to be transported from the State of Utah or from the State of origin of the shipment thereof to the purchasers thereof at their respective

points of location in various States of the United States other than the State of origin of the shipment thereof.

PAR. 2. In the course and conduct of its aforesaid business respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms and individuals also engaged in the business of selling and distributing devices, appliances, or treatments designed and used for the purposes for which respondent recommends the use of its said products.

PAR. 3. In the course and conduct of its aforesaid business and in order to induce the purchase of its said products, respondent causes to be inserted in newspapers, magazines, periodicals, and other publications having a general circulation throughout the United States, advertisements offering its said products for sale and soliciting the purchase thereof. Respondent also causes to be distributed from its place of business in the State of Utah to purchasers and prospective purchasers at their respective points of location in various other States of the United States, letters, pamphlets, booklets, and circulars concerning its said products and containing statements and representations relative to the same. In the aforesaid advertisements and advertising material respondent makes statements and representations as follows:

(*a*) That said products when used as a cover for the human body, or a portion thereof, will benefit, cure, and prevent diseases, ailments, and defects of the human body, a great many of which are specified by name in said advertisements and literature and that said products constitute discoveries in the field of electrotherapeutics.

(*b*) That said products are based upon and make practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and are the result of pains-taking and long experience and test.

(*c*) That said products when used as respondent directs set up a radiomagnetic energy and a thermoelectromagnetism which is transmitted to the person using the appliance, causing an increased activity and revitalizing of the organs and cells of the body and charging of the blood stream with electromagnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body, with a resulting cure of diseases or ailments of which the person may be suffering.

(*d*) That respondent occupies a large building in which its products are manufactured and its business generally conducted, and that it has laboratories and an advisory and a consulting board of

medical experts for analysis and advice in cases where respondent's products are being or are to be used.

(*e*) That said products are used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research.

PAR. 4. The aforesaid statements and representations by the respondent are false and misleading. The use of said products are not effective in the treatment of all diseases, ailments, afflictions, conditions, and defects of the human body for the reason that said products have no curative or therapeutic efficacy apart from the application of heat generated by the electric current passing over the wires of said products, and heat does not constitute a competent or effective treatment for many of the diseases, ailments, afflictions, conditions, or defects of the human body, and in practically all cases heat is recognized by the medical profession as affording only temporary relief. The use of said products, as directed by the respondent, does not produce any radiomagnetic or thermoelectromagnetism which is transmitted to, or has any effect on, the human body and does not cause any results other than those which are produced as a result of the application of the heat generated in the said products. The aforesaid statements and representations by the respondent attributing curative, remedial, and therapeutic values to said products other than those values resulting from the application of heat, are false. Said products may at times, if properly and intelligently used, prove beneficial in the treatment of some physical ailments, such as high blood pressure, bone diseases, and pneumonia, but any such beneficial result produced is caused solely by the heat induced by said products. Respondent does not, and did not, maintain a medical or therapeutic laboratory or clinic, and no recognized medical practitioners have ever been connected with the business of the respondent. Respondent's products are not, and have not been, used, tested, endorsed, or recommended by reputable members of the medical profession. Respondent does not, and has not, occupied, in the conduct of its business, an entire building. Respondent has occupied, and now occupies, space only on one floor of a building.

PAR. 5. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and did, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of respondent's products because of said erroneous and

mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States has been diverted unfairly to the respondent from its said competitors who do not falsely represent the therapeutic properties of their respective products.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 answer of respondent, testimony and other evidence taken before Ellis DeBruler and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, stipulations between counsel for the respondent and counsel for the Commission, which stipulations were made of record herein, brief in support of the allegations of the complaint (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent Magnecoil Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its blankets or other devices fitted with wires or other conductors for the transmission of electric current, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said products has any therapeutic value in the treatment of any ailment, disease, disorder, or condition of the human body other than that which is obtained by the application of heat to the exterior of the body or any part thereof.

2. Representing that the use of said products produces any radiomagnetic or thermoelectromagnetism which will be transmitted to, or have any effect upon, the human body.

3. Representing that said products have been endorsed, tested, used, or recommended by hospitals, members of the medical profession, or any other parties, when such is not the fact.

4. Representing that respondent has or maintains a laboratory unless respondent owns, operates, or controls a scientific laboratory and employs trained scientists and technicians and is equipped to test its products in the manner and with the methods used by recognized scientific laboratories.

5. Representing that respondent has an advisory or consulting board of medical experts for analyses or advice, unless and until such is the fact.

6. Misrepresenting in any manner the extent or nature of the building space occupied by the respondent in the conduct of its business.

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

RALPH DEWBERRY, DOING BUSINESS AS DEWBERRY ENGRAVING COMPANY AND THE NATIONAL ENGRAVING COMPANY

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

Docket 3135. Complaint, May 22, 1937—Decision, Oct. 9, 1939

Where an individual engaged in engraving stationery, letterheads, business and social cards, envelopes, and allied products, through pantograph method employed by some 90 percent of those engaged in business in question, and also through much cheaper method or process employed by him involving use of printing type in which proofs are pulled on transparent paper and in which said step is followed by various other steps, and in sale and distribution of his products, produced as aforesaid, in substantial competition with others engaged in engraving stationery and allied products and in selling same in commerce among the various States and in the District of Columbia, and including many who produce such products and distribute and sell same, and in no wise misrepresent quality or character thereof and do not disparage products of their respective competitors—

Represented that engraving produced from plates incised by hand, or by pantograph method, or method other than that used by said individual, was old style, out of date, antequated, and inferior, through statement, in some 160,000 letters which he circulated and distributed to prospective customers throughout the United States, to the effect that the reader thereof would be disappointed in the price he had been "soaked" for engraving in the past, but for which reader's engraver, with his "old-style, out-of-date equipment," had "to get a high price" and make such charges, and further statement that his prices were "the lowest in the United States because we have the most modern plant in the country," etc., facts being pantograph method employed by large part of industry, as above set forth, is not accomplished with old style, out of date, or obsolete equipment;

With tendency and capacity, through such statements unlawfully disparaging competitors, and particularly those employing pantograph method, to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true and that engraving equipment of competitors was inferior, antequated and out of date, and with result, as direct consequence of mistaken and erroneous belief induced by said acts and misrepresentations, that substantial number of consuming public purchased substantial volume of his said engraved stationery and allied products and trade was diverted unfairly to him from competitors likewise engaged in producing, distributing, and selling such products, and who truthfully advertise the same; to the injury of substantial competition in commerce:

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

Before *Mr. Edward J. Hornibrook*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Mark L. Taliaferro of Stokely, Scrivner, Dominick & Smith, 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 Ralph Dewberry, trading and doing business as Dewberry Engraving Co. and The National Engraving 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, Ralph Dewberry, is an individual trading and doing business under the names of Dewberry Engraving Co. and The National Engraving Co. with his principal office and place of business located in the city of Birmingham, State of Alabama. The respondent is now and has been for some years, engaged in the business of engraving stationery, letterheads, business and social cards, envelopes, and allied products, and in the distribution and sale thereof in commerce as hereinafter set out.

Par. 2. Said respondent, in the course and conduct of his business as aforesaid, causes his said products, when sold, to be transported from his principal place of business in the State of Alabama, to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent now maintains, and has maintained at all times, a constant current of trade and commerce in said engraved stationery and allied products so distributed and sold by him, 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 said business respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of producing, distributing and selling engraved stationery and allied products in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. All engraving is accomplished by means of intaglio plates or pieces of metal upon which letters, words, or designs have been incised or cut. There are a number of processes of producing intaglio engraved plates. One of such methods is the cutting or incision by hand. Others are the pantograph method and photoengraving process. The respondent uses or employs the photoengraving process of producing intaglio plates and the pantograph method is employed by the majority of those in the engraving trade in the United States.

PAR. 5. In the course and operation of said business, and for the purpose of inducing the purchase of his said products, the respondent under the name Dewberry Engraving Co. has solicited and conducted a large mail-order business and has caused to be sent out through the United States mails many letters of solicitation to prospective purchasers with samples of his engraving enclosed. The respondent, under his trade name The National Engraving Co., has approximately 500 agents throughout the United States about 200 of whom are active in the solicitation and sale of respondent's products. During the past 3 years the respondent has distributed by mail approximately 160,000 circular letters to prospective purchasers, both within and without the State of Alabama, the following being a true copy thereof:

You'll be disappointed if you read this letter—

* * * Disappointed in the price you have been "soaked" for engraving in the past. Not that your engraver could really help charging you so much; with old-style, out-of-date equipment, he HAD to get a high price.

Our prices are the LOWEST in the United States because we have the most modern plant in the country and specialize on engraved stationery.

GENUINE ENGRAVED LETTERHEADS
$7.00 per 1,000
New die engraved FREE

We use Engraver's Parchment which is one of the finest bonds made. Compare this sheet of paper with that you are now using and you will notice the difference immediately.

Without cost or obligation let us submit a proof of your letterhead in one of the modern styles on the enclosed style sheet.

You can use finer stationery and save money.

TRY US
DEWBERRY ENGRAVING COMPANY

The statement and representation made by the respondent "You'll be disappointed if you read this letter— * * * Disappointed in the price you have been 'soaked' for engraving in the past. Not that your engraver could really help charging you so much; with old-style, out-of-date equipment, he HAD to get a high price" serves to, directly and by inference, unlawfully disparage the competitors of the

respondent, and more specifically those competitors who use the pantograph method of cutting plates. Respondent's competitors who use and employ said pantograph method constitute approximately 90 percent of all the engraving trade in the United States and the pantograph method of engraving is not out-of-date equipment. The respondent's statement and representation "We use Engraver's Parchment which is one of the finest bonds made" is grossly false, misleading, and untrue. In truth and in fact the paper used by the said respondent in filling orders for engraved stationery and allied products is not properly nor correctly represented, designated, or referred to as parchment nor is it one of the finest bonds made, but to the contrary, is an inferior and low-grade type of bond paper. Further, the use of the phrase "Engraver's Parchment" is misleading in that its natural implication is that there is a recognized grade or type of paper of that superior quality connoted by the word parchment, especially adapted to engraved printing, and known to the trade as engraver's parchment, when such is not the fact.

PAR. 6. There are among the respondent's competitors many who produce engraved stationery and allied products and distribute and sell the same in commerce as hereinbefore described who in no way misrepresent the quality or character of their respective products and who do not falsely disparage the products of their respective competitors.

PAR. 7. The aforesaid false and misleading statements and representations made by the respondent in designating and describing his products and in disparagement of his competitors, have, and have had, the 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 into the further erroneous belief that the engraving equipment of respondent's competitors are inferior, antiquated, and out of date. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and misrepresentations of the respondent as aforesaid, a substantial number of the consuming public has purchased a substantial volume of respondent's engraved stationery and allied products with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of producing, distributing, and selling engraved stationery and allied products who truthfully advertise their products. As a result thereof, 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 the District of Columbia.

PAR. 8. 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 May 22, 1937, issued and thereafter served its complaint in this proceeding upon respondent Ralph Dewberry, 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 Commission, and in opposition to the allegations of the complaint by Mark L. Taliaferro, attorney for the respondent, before Edward J. Hornibrook, an examiner of the Commission theretofore 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 before the Commission on said complaint, and on the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed a brief, 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. Respondent, Ralph Dewberry, is an individual doing business under the trade name of Dewberry Engraving Co. and National Engraving Co., with his office and principal place of business located at Birmingham, Ala., and he has been for sometime last past, and is now, engaged in the business of engraving stationery, letterheads, business and social cards, envelopes, and allied products, and in the sale and distribution thereof. Respondent has caused and now causes said engraved products, when sold, to be transported from his principal place of business in the city of Birmingham, State of Alabama, to the purchasers thereof located in various States of the United States other than the State of Ala-

bama. There is now, and has been for several years last past a course of trade and commerce in said engraved products by respondent between and among the several States of the United States and in the District of Columbia. Respondent is now, and has been, during the past several years, in substantial competition with other firms, individuals, and corporations also engaged in the business of engraving stationery, and allied products, and in the sale thereof, similar to those of 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, and in the solicitation of sales of his products, respondent Ralph Dewberry, trading as the Dewberry Engraving Co., circulated and distributed by mail approximately 160,000 letters to prospective customers throughout the United States, a copy of which is as follows:

DEWBERRY ENGRAVING COMPANY
Designers and producers of Engraved Stationery
2024 FOURTH AVENUE
BIRMINGHAM, ALABAMA

You will be disappointed if you read this letter—

* * * Disappointed in the price you have been "soaked" for engraving in the past. Not that your engraver could really help charging you so much; with old-style, out-of-date equipment, he had to get a high price.

Our prices are the LOWEST in the United States because we have the most modern plant in the country and specialize on engraved stationery.

* * * * * * *

(The letter includes other matter not necessary to quote here.)

PAR. 3. All engraving is accomplished by means of intaglio plates or pieces of metal on which letters, words, or designs have been incised or cut; there are a number of processes of producing intaglio engraved plates, and one such method is the cutting or incision by hand. Others are the pantograph method and the photoengraving process. The pantograph method is employed by a large majority of those engaged in the engraving trade in the United States, and respondent produces intaglio plates both by the pantograph method and by a method produced by the use of printing type in which proofs are pulled on a transparent paper which is then dusted with lamp black or other opaque material. This is then placed in a vacuum printing frame against a sensitized metal plate and exposed to a strong light, which hardens the sensitized surface of the plate where the light strikes. The plate is then washed under a stream of water, dried and burned, causing the sensitized topping to become acid resisting. The plate is then etched to the required depth. Afterward, the sensitized cutting is removed and the plate chromium faced. The plate is then run on a power press with the use of

special plate holders. The plate is composed of either copper, brass, or steel. The pantograph method of producing intaglio plates is much more expensive than respondent's method just described. The production of intaglio plates by cutting or hand incision or tooling is much more expensive than either the pantograph or respondent's method.

PAR. 4. The pantograph method of engraving which is used by approximately 90 percent of those engaged in the business is not accomplished with "old-style," "out-of-date," or obsolete equipment; and the statements in respondent's letter serve directly and by inference unlawfully to disparage the competitors of respondent, and more specifically those competitors who employ the pantograph method of cutting plates.

PAR. 5. There are among respondent's competitors many who produce engraved stationery and allied products, and distribute and sell same in commerce who in no way misrepresent the quality or character of their respective products and who do not falsely disparage the products of their respective competitors.

PAR. 6. The aforesaid acts and practices, and false statements made by respondent in disparagement of his competitors, have had, and have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the further erroneous belief that the engraving equipment of respondent's competitors is inferior, antiquated, and out of date. Further, as a direct consequence of a mistaken and erroneous belief induced by the acts and misrepresentations of respondent, as aforesaid, a substantial number of the consuming public has purchased a substantial volume of respondent's engraved stationery, and allied products, with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of producing, distributing, and selling engraved stationery, and allied products, and who truthfully advertise their products. As a result thereof 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 the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent Ralph Dewberry as herein found, 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 answer of the respondent, testimony, and other evidence taken before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint by Morton Nesmith, counsel for the Commission (respondent not having filed brief 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 the Federal Trade Commission Act.

It is ordered, That respondent, Ralph Dewberry, individually and trading as Dewberry Engraving Co. or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his engraved stationery, letterheads, business and social cards, envelopes, and allied products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that engraving produced from plates incised by hand or by the pantograph method or by any method other than that used by respondent is old style, out of date, antiquated, or inferior.

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

NATIONAL TRAINING INSTITUTE, INC., AND JOHN C. FELBER, ARTHUR W. GROTH, AND LOUISE D. FELBER

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

Docket 3304. Complaint, Jan. 17, 1938—Decision, Oct. 9, 1939

Where a corporation and three individuals, who constituted its only officers and directors and holders of its stock, and were in active management and control thereof, engaged in selling, by correspondence, courses of home study instruction intended for persons expecting to take examinations to be conducted by the United States Civil Service Commission, and in sending their lesson material to respective purchasers in various other States, in active competition with numerous others also engaged in sale of courses of instruction of same general nature, and, as thus engaged, in advertising (in which their business as aforesaid was not disclosed) in newspapers and periodicals of general circulation, that free particulars would be given concerning jobs with the United States starting at $1,260 to $2,000 a year, and in circulars sent to prospects whose names they had obtained and to unnamed box holders on rural free delivery routes, that they would show addressees how they could get on the civil service pay roll and that the Government needed 50,000 to 86,000 new employees yearly with opening salaries as aforesaid—

(*a*) Represented, through salesmen or solicitors employed directly by them or by sales organization of said corporation, to prospective students whom it contacted as above set forth, that they represented the United States Civil Service Commission, and that said corporation was authorized to enroll students and train them for Government positions, and represented, through inclusion or use of word "National" in corporate name employed, that they were connected with the United States Government;

(*b*) Represented to prospective students thus contacted that when the course of instruction sold by said corporation was completed by student he would be given an examination and, if he passed such examination, he would then be placed at once in the Government service, and that such corporation would have inside information concerning Government examinations and positions and would know in advance what the questions would be in the examinations to be held by commission in question; and

(*c*) Represented that only a limited number of students would be selected by corporation in question in any particular community, and that said commission favored students of the school conducted by such corporation;

Facts being they had no jobs at their disposal and could not in any way influence or control appointments to positions in the classified civil service of the United States, nor be of assistance to prospective appointees to such positions, other than instructing them so that they might be better prepared to take examinations to have their names placed upon eligibility rolls, and school in question, like similar ones, had no information regarding civil service examinations or appointments to positions in the classified civil service, except such as is given to public at large;

With tendency to cause members of public, through aforesaid and other false, misleading, and deceptive claims and representations of similar import, to believe that such salesmen or solicitors and school conducted by said corporation were in fact connected with the Government, and with result that many members of public were induced to purchase or subscribe for courses of instruction offered by them in erroneous belief that such claims and representations were true, and with effect that patronage, by reason of said claims and representations and inclusion of word "National" as aforesaid, was diverted unfairly to them from their competitors:

Held, That such claims and representations, made as above set out, were all to the injury of the public and competitors, and constituted unfair methods of competition.

Before *Mr. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Harry D. Michael and *Mr. William L. Pencke* for the Commission.

Complaint

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that National Training Institute, Inc., a corporation, and John C. Felber, Arthur W. Groth, and Louise D. Felber, individually and as officers of said corporation, all 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, National Training Institute, Inc., is 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 20 East Jackson Boulevard in the city of Chicago in said State. Respondent, John C. Felber, is the president of said corporation, said Arthur W. Groth is its vice president, and said Louise D. Feller is secretary-treasurer thereof. Their office addresses are the same as that of said corporate respondent. Said individual respondents are, and have been, in active charge of the business of said corporate respondent and control and direct its acts, practices, and policies.

Par. 2. Respondent, National Training Institute, Inc., is now, and has been since on or about July 12, 1935, engaged in the sale and distribution in commerce between and among the various States of

the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Said respondent corporation, in the course and conduct of said business, during the time aforesaid, caused and does now cause, its said courses of study and instruction to be transported from its said place of business in Chicago to, into and through States of the United States other than Illinois to the various purchasers thereof in such other States.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of courses of study and instruction intended for preparing students thereof for examinations for civil service positions under the United States Government and also of courses of study and instruction in other lines, all of which are pursued by correspondence. Said respondent corporation has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States, in the sale of its said courses of study and instruction, with such other individuals, firms, and corporations.

PAR. 4. Said respondents, directly or through representatives and agents designated and appointed by respondent corporation under and by the supervision and direction of its said officers, have made many misrepresentations to prospective students in soliciting the sale of and in selling said courses of study and instruction, among which are the following:

1. That the sales representatives of respondent corporation, engaged in soliciting students, are in the employ of, or otherwise represent or are connected with, the United States Government.

2. That respondent corporation is an agency of or representative of or connected with the United States Government or the United States Civil Service Commission.

3. That a civil service examination for the position desired or considered by the prospective student solicited will be held at a definite time or within a certain period of time stated or within a reasonably short time or that it will be held at a certain place at or within one of the periods of time previously stated.

4. That classified civil service positions under the United States Government for which training is offered are open and available at the time solicitations of students are made.

5. That a Government appointment is assured or guaranteed to the prospective student solicited to take said courses.

6. That respondent corporation will notify its students of dates and places of civil service examinations and that it makes a regular practice of doing so.

7. That the prospective student solicited has been especially selected to take the courses offered because of his standing in the community, his character or qualifications or for other special reasons.

8. That a civil service position can only be secured by taking the course or courses offered by respondent corporation.

9. That the respondent corporation trains its students for the work of the civil service positions for which such students enroll for training, rather than merely for the examinations therefor.

10. That respondent corporation will obtain civil service positions for its students after the training offered is completed.

11. That respondent corporation will recommend its students for civil service positions after its courses are completed, that it does do so, and that such recommendations are of material value in securing Government positions.

12. That many of the students of respondent corporation are obtained through recommendations of other students.

13. That the price for which courses are offered is lower than the regular price or that the price thereof is about to be advanced.

14. That respondent corporation has connections in Washington by means of which it secures advance information of civil service examinations, information on coming appointments and other useful inside information.

15. That the salesman, who secures the enrollment of a student, or other representative of respondent corporation, will give personal instruction or assistance in the course of the training.

16. That the money paid by the student who enrolls is only for security or as a bond or to cover actual expenses of giving the training.

17. That the age limits for civil service appointments are other than those that prevail in the classified service.

18. That a limited number of applicants are being selected for the training offered.

Respondent corporation and its officers, the individual respondents herein, have contributed to the misleading representations of salesmen as aforesaid and encouraged the same by use of the word "National" in the name of said school, which said word, used in connection with the offering of instruction for civil service examina-

tions, and also in connection with the misrepresentations of Government connection as herein set out, has the tendency and capacity to cause prospective students to believe that respondent corporation is part of or connected with or representative of the United States Government. Respondents have further contributed to the use of said misrepresentations by the sales talk furnished by them to salesmen, as well as by various statements in its printed and advertising matter and by other means.

In truth and in fact, neither respondent corporation, its officers nor salesmen have any connection whatever with the United States Government or with the United States Civil Service Commission as employees or representatives thereof. Neither respondents nor said salesmen have advance knowledge of the times and places of civil service examinations, and representations made in soliciting students to the effect that examinations will be held at a particular time or place have been made without any foundation in fact. Classified civil service positions in reference to which respondents have offered training have not been open and available in the instances and at the times such representations to that effect have been made. Respondent corporation cannot guarantee Government appointments nor does the taking of said courses assure such appointments. Respondent corporation does not notify its students as a regular thing of dates and places of civil service examinations. No special selection is made of students to take the training offered by said school nor is the number accepted limited as to locality or otherwise. It is not necessary to take a course offered by respondent school in order to secure a civil service position. The training offered by said school is not such as to qualify students thereof for filling civil service positions or to constitute basic training therefor, but is only preparatory for the examinations held in connection therewith. Respondent corporation does not obtain Government positions for its students or recommend its students for them, nor does its recommendation have any material effect in deciding on the matter even if given. Respondent corporation's students are obtained by active solicitation and not in any material degree as a result of the recommendations of students already enrolled. Where prices higher than the regular price at which said courses are sold have been quoted by salesmen as being about to be put into effect or as being already in effect, such quoted prices have been fictitious and without bona fide intentions of being put into effect. Respondent corporation has no connections in Washington through which it secures or can secure advance information as to civil service examinations, coming appointments or other

inside information that is not available to the general public. No personal instruction is given or furnished by said school or by its representatives. Money paid by students is for the purchase of said courses and such transactions are purely commercial. Applicants solicited and accepted for training by said school are not limited in number but all available prospects, generally speaking, are solicited and accepted.

PAR. 5. Respondent corporation, through its representatives and otherwise, in the sale of said courses as aforesaid, also makes many other representations which are misleading in that they incorrectly state the facts involved, or fail to state pertinent facts in relation thereto, or because they have no basis in fact. Among such misleading representations are those that exaggerate the number of appointments made in the United States classified civil service by means of general statements of total number of Government appointments within a certain period without disclosing the number included therein that are not in the classified civil service; those that exaggerate the length of tenure of office of persons in the classified civil service, the steadiness of employment, raises, pensions, and salaries.

PAR. 6. Respondent corporation, in the sale of its said courses as aforesaid, also makes misleading representations to the effect that Government positions under the classified civil service are open or will be open, when, in fact, only substitute employees are given initial appointments in the classifications about which such representations are made.

PAR. 7. Respondent corporation, in the sale of its said courses as aforesaid, further makes misleading representations as to the kind of positions available under the classified civil service by designating various of its courses by names and designations that do not represent classifications currently used by the United States Civil Service Commission in conducting its examinations or in making appointments as a result thereof. Among such misleading designations so used by respondent corporation are the following: "immigrant clerk," "motor carrier," "general clerk," "departmental clerk," and "oil inspector."

PAR. 8. Respondent corporation, in the sale of its said courses as aforesaid, through use of a so-called "Money-Back Agreement," as well as by direct representations of salesmen, represents to students and prospective students that money paid for instruction will be refunded in the event Government positions are not obtained by its students or if they fail to pass the examinations for which they

have prepared. Said "Money-Back Agreement," formerly in use, reads as follows:

Money-Back Agreement

The "National Training Institute" agrees to repay every cent paid by you if you fail to pass the examination for which your course has prepared you. If you pass the examination and are not offered an appointment before your name is dropped from the list for those eligible for appointment the National Training Institute agrees to repay every cent paid by you on the following conditions: You must have studied with us for at least six consecutive weeks prior to the examination, followed our instructions carefully in studying the lessons, that all exercises have been checked and graded by the National Training Institute, and made your payments promptly as agreed upon. If you prefer, instead of taking the refund, we will continue to prepare you without any additional charge for your course of training, until you do receive an appointment. It is agreed that courses must be completed before refund is made.

The agreement more recently used by respondent corporation, as aforesaid, reads as follows:

Money-Back Agreement

The "National Training Institute" agrees to repay every cent paid by you if you fail to pass the examinations for which your courses have prepared you on the following conditions: You must have notified the National Training Institute by registered mail of the grade obtained; you must have followed our instructions carefully and studied with us for at least six consecutive weeks prior to the examination; all exercises must have been checked and graded by the National Training Institute; your payments must have been made promptly as agreed upon. If you prefer, we will continue to prepare you without any additional charge for your courses of training, until you do pass the examinations. It is agreed that courses must be completed before refund is made.

The implication of the agreement first above quoted is that a civil service examination for which the student prepares will be held within a reasonable time after such student completes the course offered by respondent corporation and that he will be given a refund of the money paid for such course if he fails to pass. It further implies that such student will receive a Government appointment within a reasonable time after taking said course in the event he passes the examination and that his right to a refund will be determined within such time.

The implication of the second agreement above quoted is that examinations for which students have prepared will be held within a reasonable time and that it may be determined within such time whether a refund is due thereunder.

In truth and in fact said agreements are, for all practical purposes, meaningless and inoperative in a large majority of cases and

are misleading for the reason that at certain times and in regard to certain examinations for which respondent corporation offers courses no examinations are held for long periods of time, and as to other examinations none are likely to be held in the locality for which students preparing therefor are eligible. Moreover, even if an examination should be held and a student placed on the eligible list, the chances of appointment are remote or, if eventually made, it is usually only after a long waiting period due to the fact that in many of the classifications used in making appointments to the classified civil service, for which respondent corporation offers instruction, great numbers of eligibles are available for comparatively few appointments. The second agreement above quoted is further inoperative and misleading as a refund agreement since a student to whom such agreement applies must pass all examinations for which he has contracted to prepare, before he can determine whether he is eligible for a refund. This is brought about by contracts being negotiated by agents of respondent corporation wherein more than one position is named for which instruction is to be given in preparation for examinations.

PAR. 9. The use by respondents of the foregoing statements and representations, and others similar thereto, in offering for sale and selling its courses of study and instruction, as herein set out, has had and now has, the tendency and capacity to, and does in fact, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4, 5, 6, 7, and 8 hereof are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent corporation from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for civil service examinations as well as from those so engaged in such sale in other lines of study.

There are among the competitors of respondent corporations those who, in the sale of their respective courses of instruction, do not similarly or in any manner, misrepresent their courses of study and instruction or matters pertaining thereto. As a result of respondents' said practices as herein set forth, substantial injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 10. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respond-

ent corporation, 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 the Federal Trade Commission Act, the Federal Trade Commission on January 17, 1938 issued its complaint in this proceeding and caused same to be served upon the respondents National Training Institute, Inc., a corporation, and John C. Felber, Arthur W. Groth, and Louise D. Felber, individually and as officers of said 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 a joint answer thereto by said respondents, testimony and other evidence in support of the allegations in the complaint were introduced by Harry D. Michael and William L. Pencke, attorneys for the Commission, and in opposition to the allegations of the complaint by John C. Felber, one of the respondents herein, before William C. Reeves and Miles J. Furnas, examiners for the Commission theretofore duly designated by it, and the said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter said proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence and the brief of counsel for the Commission in support of the complaint. Respondents waived the filing of briefs and oral argument, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent National Training Institute, Inc., is a corporation organized in July 1935 under the laws of the State of Illinois with principal place of business at 20 East Jackson Boulevard, Chicago, Ill. For more than 2 years after its organization, said corporation was engaged in the business of the sale and distribution of courses of home study instruction intended for persons who expected to take examination to be conducted by the Civil Service Commission of the United States for the purpose of providing lists of persons eligible for appointment to positions in several of the

branches of the classified civil service of the United States. The courses of instruction sold by respondent were in printed form and have been given by said respondent by correspondence and were sold to persons residing in various States of the United States, and the lesson material included in such courses of instruction was sent by said respondent by the United States mail from Chicago, in the State of Illinois, through and into various other States of the United States, to the respective purchasers thereof. In the conduct of its said business said respondent has been in active competition with numerous persons and partnerships and other corporations also engaged in the sale of courses of instruction of the same general nature as those sold by said respondent, in commerce among several of the States of the United States. The respondent John C. Felber is the president of the respondent National Training Institute, Inc.; the respondent Arthur W. Groth is its vice president; and the respondent Louise D. Felber is its secretary and treasurer. These individual respondents are the only officers and directors of the respondent National Training Institute, Inc. and are the holders of all the shares of its capital stock issued and outstanding and have been in the active management and control of the business carried on by said respondent National Training Institute, Inc.

PAR. 2. As a means of contacting prospective purchasers of the courses of instruction offered for sale by the respondent National Training Institute, Inc., it has caused advertisements to be published in newspapers and other periodicals of general circulation in various States of the United States, in which advertisements announcement was made that free particulars would be given by respondent concerning jobs with the United States starting at $1,260 to $2,000 per year. Said respondent also has resorted to the practice of mailing to prospects whose names it had obtained, and to unnamed box holders on rural free delivery routes, circular letters each with a business reply card attached addressed to said respondent. In these circulars the request was made that each of the addressees detach the reply card and fill out, sign, and mail same, the postage thereon to be paid by respondent. These circulars contained printed matter among which was a statement that said respondent would show the addressees how they could get on the civil service pay roll of the United States; that the Government needed 50,000 to 86,000 new employees yearly with opening salaries of $1,260 to $2,000 per year. Distribution of these circulars was also made for respondents from door to door by advertising agencies. Neither these advertisements nor the circulars so used made any reference to the fact that the said respondent was in the business of selling courses of instruction. When

responses to such advertisements and circulars were received by said respondent, it then mailed its advertising matter to each of the persons so responding and had a salesman call on each of such persons for the purpose of selling the courses of instruction offered for sale by said respondent.

PAR. 3. The salesmen or solicitors who called on members of the public and endeavored to induce them to purchase the courses of instruction offered for sale by the respondent National Training Institute, Inc., were either employed direct by said respondent or through the sales organization which it had created; these salesmen or solicitors as a means of inducing members of the public to purchase or subscribe for such courses of instruction made numerous false, misleading, and deceptive claims and representations concerning the courses of instruction offered for sale by said respondent and the benefits that might be derived by subscribers to such courses, among which were claims and representations to the effect that such salesmen or solicitors represented the United States Civil Service Commission; that the respondent National Training Institute, Inc. was authorized by the Civil Service Commission to enroll students and to train them for Government positions; that when the course of instruction sold by said respondent was completed by a student, such student would be given an examination, and if he passed such an examination he then would be placed at once in the Government service; that said respondent would have "inside" information concerning Government examinations and jobs, and would know in advance what the questions would be in the examinations to be held by the United States Civil Service Commission; that only a limited number of students would be selected by said respondent in any particular community; that the Civil Service Commission of the United States favored students of the school conducted by said respondent. The use by such salesmen or solicitors of said claims and representations and other false, misleading, and deceptive claims and representations of similar import, caused numerous members of the public to believe that such salesmen or solicitors and the school conducted by said respondent were in fact connected with the United States Government, and many of such members of the public were induced to purchase or subscribe for the courses of instruction offered for sale by said respondent in the erroneous belief that such claims and representations were true. Also the inclusion of the word "National" in the corporate name of said respondent was misleading and deceptive and had a tendency to cause members of the public to believe that said respondent was in some way connected with the United States Government and as a result of said claims and representa-

tions and by the inclusion of the word "National" in the corporate name of said respondent, patronage has been diverted unfairly to respondent from its competitors.

PAR. 4. The respondents have no jobs at their disposal and cannot in any way influence or control appointments to positions in the classified civil service of the United States, and can be of no assistance to prospective appointees to such positions except by instructing them so that they might be better prepared to take the necessary examinations to have their names placed upon the eligibility rolls. The school conducted by respondents and similar schools do not have any advance information regarding civil service examination or appointments to positions in the classified civil service of the United States, except such information as is given to the public at large.

CONCLUSION

The claims and representations made by the respondents as hereinbefore set out, are all to the injury of the public and to competitors of respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 respondents, testimony, and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commissiion theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by William L. Pencke, counsel for the Commission, brief and oral argument having been waived by the respondents, 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 respondents, National Training Institute, Inc., a corporation, its officers, and John C. Felber, Arthur W. Groth, and Louise D. Felber, and its and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of courses of study or instruction for civil service positions, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondents have any connection whatsoever with the United States Government or any agency thereof, or

that respondents are able to secure any advance information with respect to appointments to civil service positions which is not available to the general public.

2. Representing that civil service examinations are held at stated periods or at short intervals.

3. Representing that civil service positions are always available and that the appointment of the purchasers of respondents' said courses of instruction to such positions is assured or guaranteed by the respondents.

4. Representing that prospective students are selected by the respondents because of the superior qualifications and the standing in the community of such students.

5. Representing that respondents recommend their students for civil service positions and that such recommendations are of value to students seeking such positions.

6. Representing that the price of the respective courses of instruction is lower than the regular or usual price thereof, or that the price of such courses of instruction is about to be advanced unless and until such is the fact.

7. Representing, through the use of the word "National" or any similar word or words in the corporate or trade name, or in any other manner, that respondents have any connection with the United States Government or any agency thereof.

8. Representing, through the use of any contract form or any money-back agreement, or in any other manner, that a position with the United States Government is guaranteed to purchasers of said courses of instruction.

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

WARD M. JONES AND JOHN H. JONES, DOING BUSINESS AS WARD 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 3509. Complaint, July 26, 1938—Decision, Oct. 10, 1939

Where two partners engaged in manufacture, sale, and distribution of their "Hydro-Flue" device or attachment for use in lieu of stove pipes in gas ranges, in competition with others engaged in sale and shipment in interstate commerce of similar appliances and who truthfully represent their products in their advertising and otherwise; in soliciting sale of and selling their said product—

(*a*) Represented, through advertising circulars or letters which they furnished, that their said "Hydro-Flue" device for gas ranges was the only device or attachment which was a satisfactory substitution for stove pipes on such ranges; and

(*b*) Represented that there was "absolutely no hazard" with the use of such "Hydro-Flue" to replace stove pipe on a gas range;

Facts being it was not the only satisfactory attachment on the market, but there were competitive products which were designed, sold, and used for same purpose, no device would effectively remove carbon monoxide fumes from products of combustion emitted by gas-burning appliances, and their said device was not safe substitute for stove pipes and did not constitute safeguard against danger of carbon monoxide when used on gas-burning appliances;

With effect of misleading and deceiving purchasing public into buying such "Hydro-Flue" device in the erroneous belief that such representations were true, and that there were no other devices on the market which were satisfactory and would serve same purpose, and that such attachment constituted safeguard against danger of carbon monoxide, involving no hazards, and safe substitute for stove pipes as aforesaid, and of thereby diverting trade unfairly to them from competitors whose ability to compete successfully with them was lessened and injured by methods aforesaid:

Held, That such acts and practices, under the circumstances set forth, 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. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ward M. Jones and John H. Jones, doing business as Ward Manufacturing Co.,

hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ward M. Jones and John H. Jones, are individuals trading and doing business as copartners under the firm name and style of Ward Manufacturing Co., with their principal office and place of business at 111 East Milwaukee Avenue, in the city of Detroit, State of Michigan.

PAR. 2. Said respondents are now and for several years last past have been engaged in the manufacture, sale, and distribution of a device designed to be attached to gas ranges in commerce between and among the various States of the United States and the District of Columbia. Said device, known as Hydro-Flue, is a flue attachment for replacing stove pipes on gas ranges.

Respondents cause said product, when sold, to be shipped from their place of business in the State of Michigan to purchasers thereof located in a State or States of the United States other than the State of Michigan and in the District of Columbia.

There is now, and has been at all times herein mentioned, a course of trade in said product 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. 3. In the course and conduct of their business as aforesaid, respondents are now and for more than 2 years last past have been, in substantial competition with other partnerships and with individuals, firms, and corporations, engaged in the 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. 4. Said device, Hydro-Flue, consists of an oval-shaped aluminum flue and water container, about 7 inches in length, with a porcelain top which forms a lip or cup around the edge of the flue and is about 4 inches in diameter. The device is constructed to fit the exhaust vent of any standard gas range. The fumes from the stove are forced to circulate over the top of the water container and out through the porcelain top.

PAR. 5. Said respondents, in connection with the sale and distribution of said Hydro-Flue and for the purpose of inducing and purchase thereof, make, and circulate among the purchasing public, certain statements as to efficiency of said product in pamphlets, circulars, and otherwise, as follows:

Hydro Flue for Gas Ranges * * * For Seven Years The only completely satisfactory Flue Attachment for replacing stove pipe, with patented water wash.

There is absolutely no hazard with the use of the Hydro Flue to replace the stove pipe on a gas range.

PAR. 6. Said statements together with similar statements appearing in respondents' advertising literature purport to be descriptive of respondents' product and represent (1) that said flue attachment is the only satisfactory appliance on the market at the present time and therefore superior to all other competitive products which are offered and sold to the purchasing public for the purpose of cleansing and deodorizing the fumes which emanate from gas ranges, (2) is a safe substitute for stove pipes of gas ranges, implying thereby that said device will remove carbon monoxide gas which may develop during the use of the gas range and will thereby insure freedom from the danger of poisoning by carbon monoxide gas.

PAR. 7. In truth and in fact said representations are false and misleading in that said Hydro-Flue is not the only satisfactory flue attachment on the market but is sold in competition with other similar attachments and devices which are designed for the same purpose of cleansing and purifying cooking vapors and fumes and possess substantially the same efficiency. In truth and in fact there is no device known to science which will effectively remove carbon monoxide fumes from the products of combustion emitted by gas burning appliances and respondents' flue attachment is therefore not a safe substitute for stove pipes and does not constitute a safeguard against the danger of carbon monoxide when said device is used on gas-burning appliances.

PAR. 8. In the course and conduct of their business as hereinbefore described, respondents are and have been in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce among and between the several States of the United States and in the District of Columbia of similar appliances who truthfully represent their products in their advertising and otherwise.

PAR. 9. The false and misleading representations made by respondents as set forth in paragraph 5 hereof, have the capacity and tendency to, and do mislead and deceive the purchasing public into buying said Hydro-Flues in the erroneous belief that said representations are true and that there are no other devices on the market which are satisfactory and will serve the same purposes for which respondents' device is offered and that said attachment constitutes a safeguard against the danger of carbon monoxide and that no hazards are encountered with respect thereto if respondents' appliance is used and that it constitutes a safe substitute for stove pipes on gas ranges. As a result thereof trade has been diverted unfairly to

them from their said competitors whose ability to compete successfully with respondents has been and is lessened and injured by the methods of respondents hereinbefore set forth.

PAR. 10. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of July 1938, issued, and, on the 28th day of July 1938, served its complaint upon the respondents, Ward M. Jones and John H. Jones, doing business as Ward Manufacturing Co., charging them with the use of unfair methods of competition in commerce as "commerce" is defined in said act. After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Miles J. Furnas, examiner of the Commission theretofore duly designated by it. The respondents offered no testimony or other evidence. Said testimony and other evidence introduced have been duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on said complaint, the testimony and other evidence, and brief of counsel for the Commission in support of the complaint. (The respondents filed no 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. Respondents Ward M. Jones and John H. Jones are individuals trading and doing business as copartners under the firm name and style of Ward Manufacturing Co., with their office and principal place of business at 109 East Milwaukee Avenue, in the city of Detroit, State of Michigan.

PAR. 2. Said respondents are now, and for more than 1 year last past have been, engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia, of a device designed to be attached to gas ranges. Said device, known as a "Hydro-Flue," is a

flue attachment to be used in lieu of stove pipes in gas ranges. Respondents cause said product, when sold, to be shipped from their place of business in the State of Michigan to purchasers thereof located in a State or States other than the State of Michigan and in the District of Columbia. There is now, and has been at all times herein mentioned, a course of trade in said product so sold and distributed by respondents in commerce 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 as described in paragraph 2 hereof, in soliciting the sale of and selling their product, furnished certain advertising circulars or letters containing the following statements:

HYDRO-FLUE FOR GAS RANGES FOR SEVEN YEARS

The only completely satisfactory flue attachment for replacing stove pipe, with patented water wash * * *

Also:

There is absolutely no hazard with the use of Hydro-Flue to replace the stove pipe on a gas range

PAR. 4. The Commission finds that said representations, as described in paragraph 3 hereof, are false and misleading, in that said Hydro-Flue attachment is not the only satisfactory flue attachment on the market, but it is sold in competition with similar attachments and devices sold in interstate commerce, and which are designed, sold, and used for the same purpose. The Commission also finds that there is no device which will effectively remove carbon monoxide fumes from the products of combustion emitted by gas-burning appliances, and respondents' flue attachment is therefore not a safe substitute for stove pipes and does not constitute a safeguard against the danger of carbon monoxide when said device is used on gas-burning appliances.

PAR. 5. In the course and conduct of their business as hereinbefore described, respondents are and have been in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in interstate commerce of similar appliances, and who truthfully represent their products in their advertising and otherwise.

PAR. 6. The Commission finds that the false and misleading representations made by said respondents, as set forth in the foregoing paragraphs hereof, have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said Hydro-Flues, in the erroneous belief that said representations are true and that there are no other devices on the market which are satisfactory

and will serve the same purpose for which respondents' device is offered, and that said attachment constitutes a safeguard against the danger of carbon monoxide and no hazards are encountered with respect thereto if respondents' appliance is used, and that it constitutes a safe substitute for stove pipes on gas ranges. As a result thereof, trade has been diverted unfairly to said respondents from said competitors, whose ability to compete successfully with said respondents has been and is lessened and injured by the methods of respondent hereinbefore set forth.

CONCLUSION

The acts and practices of respondents, as hereinbefore found, are all to the injury and prejudice of the public and of competitors of respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 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, respondents having offered no testimony or other evidence, brief filed in support of the allegations of the complaint by William L. Pencke, counsel for the Commission (respondents not having filed brief and 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Ward M. Jones and John H. Jones, individually and doing business as Ward Manufacturing Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of a mechanical device for use on gas ranges, now designated as Hydro-Flue, or any other device or devices of substantially similar construction and design, whether sold under said name or any other name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that said device is the only device or attachment which is a satisfactory substitution for stove pipes on gas ranges.

2. Representing in any manner that the use of said device on gas ranges is safe or harmless or that the use of said device eliminates or removes the carbon monoxide gas emitted by gas ranges.

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 complied with this order.

IN THE MATTER OF

CUBAN HEALTH 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 3733. Complaint, Mar. 7, 1939—Decision, Oct. 10, 1939

Where a corporation engaged in importing, selling, and distributing its "El Aguinaldo Cuban Honey" food product to purchasers in various States and in the District of Columbia; in advertisements which it disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through circulars and other printed or written matter, and which were intended and likely to induce purchase of its said product—

(*a*) Represented that said "El Aguinaldo Cuban Honey" was a cure or remedy for coughs, colds, asthma, and bronchitis, and constituted a competent treatment therefor, facts being it was not an effective remedy or cure for such ailments or similar respiratory disorders, excepting as it might be a palliative for coughs due to local irritations of throat and, applied locally, might have soothing effect in case of local irritations of nose;

(*b*) Represented that its said product was a cure or remedy for stomach ulcers and digestive disorders, and would reduce free acid content of intestines and would reduce mucous and favorably affect colitis and act as bowel antiseptic, facts being said product contained no alkaloids, consisted principally of water, levulose, and dextrose, differed little in composition from domestic honeys, and would not reduce such acid content or mucous, or have such colitis result, or act as such antiseptic, and was not such a cure or remedy or competent treatment for ulcers or for digestive disorders, other than as a bland food or, as such a food, where bland diet would be prescribed;

(*c*) Represented that said honey was a tonic, which would tone the system and restore the body, and that it constituted a tissue builder, and use thereof would normalize blood count, facts being it would not have such normalizing result and was not such a tonic, and would not accomplish other results above set forth, other than as supplying easily assimilated food value; and

(*d*) Represented that its said product would heal and cure cuts, bruises, and varicose ulcers, and constituted a competent treatment therefor, facts being it would not accomplish such results and did not constitute such a treatment, other than as local applications thereof might serve as an adjunct to other forms of treatment;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of its said product as result of such belief, and with result of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might deceive or mislead members of said public into erroneous belief that such representations were true and into purchase of its said product by reason of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Frederic P. Lee of Alvord & Alvord, of Washington, D. C., and *Shields, Ballard, Jennings & Tabor*, of Lansing, Mich., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Cuban Health Products, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Cuban Health Products, Inc., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business located at 125 East Kalamazoo Street, Lansing, Mich.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of importing, selling, and distributing a food product under the name of "El Aguinaldo Cuban Honey." Respondent causes said product, when sold, to be shipped from its aforesaid place of business in the State of Michigan to said purchasers located in various States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails, by insertion in newspapers and in periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product, and has disseminated, and is now disseminating, and has caused and is now causing the dissemina-

tion of, false advertisements concerning its said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Used successfully in overcoming stomach ulcers, stomach disorders, bowel and colon troubles. Also asthma, bronchitis, coughs and colds. A natural tissue builder for the weak and anemic.

If you suffer with stomach or intestinal ailments, or from asthma, colds and bronchial troubles, why not correct them with El Aguinaldo Cuban Wonder Honey.

You will want El Aguinaldo Cuban Honey for colds, coughs, bronchitis and asthma. It will clear your nose, throat and stomach of phlegm and mucous. * * * Stomach ulcers are relieved by El Aguinaldo Cuban Honey. * * * Physicians have had excellent results, too, in using this El Aguinaldo Cuban Honey for varicose ulcers. It is applied externally in this condition. * * * Children, or adults, who tire easily, are run down or are susceptible to colds are often in need of general systemic tonic. El Aguinaldo Cuban Honey is nature's own product—a natural tissue builder, toning the system and helping to restore the body to the strong, healthy condition nature meant for you to have. * * * You will want El Aguinaldo Cuban Honey to apply to cuts and burns.

Recommended as an aid in overcoming Asthma, Colds, Bronchitis, Stomach Ulcers, Varicose Ulcers.

Natural Asthma Relief. * * * Physicians report that many of their patients who have used this remarkable medicinal honey show a marked improvement from the first dose. The gasping, choking spasms are relieved. * * *

In Stomach Ulcers—it reduces the free acid content, thus relieving the pain and irritation and giving the ulcerated surface a chance to heal. In Colitis—it tends to change the intestinal flora and reduces the mucous. In Bowel Distress—its antiseptic qualities aid in decreasing gas, mucous and belching. In Asthma—it tends to reduce the spasmodic attacks. In Bronchitis—its action helps loosen mucous and lessens the paroxysms. In Coughs—it has a soothing action and loosens tenacious phlegm.

Normalizing the Red and White Blood Count Clinical tests show normalizing in from five to eight weeks.

Reducing the Free Acid Content in the Digestive Tract.

Loosing Phlegm and Reducing Mucous, Especially in Respiratory Conditions.

An imported food sensation for bronchial and asthma victims.

No family should be without this natural product as an insurance against ills.

El Aguinaldo Cuban Honey.

Bronchial and asthma victims praise its merits for the real benefits received during this season of the year.

El Aguinaldo Cuban Honey. A diet supplement aiding colds, asthma, bronchitis, digestive disorders.

PAR. 4. All of the said statements, together with similar statements appearing in respondent's literature, purport to be descriptive of

respondent's food product. Through the statements and representations in all its advertising literature herein set out, and other statements of similar import and effect, respondent, directly or by inference, represents that its food product, El Aguinaldo Cuban Honey, is a competent and effective remedy for, and has curative value in the treatment of, coughs, colds, bronchitis, and asthma, and that its use will relieve these disorders; that it relieves stomach ulcers, is a tonic and tissue builder which will tone the system and restore the body; that it will heal and relieve cuts, bruises, and varicose ulcers; that it reduces the free acid content in the intestines and reduces the mucous in colitis and is a bowel antiseptic; and that it normalizes the blood count.

In truth and fact, the above and similar statements made by respondent in its advertising literature are false, misleading, and untrue. Respondent's product is not an effective remedy or competent treatment for coughs, colds, asthma, bronchitis, or similar respiratory disorders, and its use will not relieve these disorders other than in certain cases of coughs when it will produce a soothing effect. It does not relieve the pain of stomach ulcers or have any curative value therefor. It is not a tonic or tissue builder which will tone the system or restore the body. It will not heal cuts, bruises, or varicose ulcers, though it may, in certain cases, serve as an adjunct in treating such conditions. Such product will not reduce the free-acid content of the intestines nor reduce the mucous in colitis, nor is it a bowel antiseptic. It will not normalize the blood count. The representations made by the respondent with respect to the therapeutic qualities of its food product are grossly exaggerated, false, misleading, and untrue, as said product will not accomplish the results claimed. The value of such product in the treatment of digestive disorders is limited to that of a bland food.

PAR. 5. The true facts are that the respondent's honey does not contain any therapeutic qualities nor does it contain any alkaloids. It is merely a concentration of levulose and dextrose, which are the same properties embodied in domestic honey. These properties are not curative of, nor do they act as a relief agency for, any of the aforesaid ills.

PAR. 6. The use by the respondent of the foregoing false advertisements and deceptive and misleading statements and representations with respect to the food product, El Aguinaldo Cuban Honey, disseminated as aforesaid, 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 and mistaken belief that said statements and representations are true and into the purchase

of respondent's said product as the result of such erroneous and mistaken belief. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's food product.

Further, the acts and practices of the respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may deceive or mislead members of the purchasing public into the erroneous belief that the aforesaid representations of respondent are true and into the purchase of said product because of said erroneous belief.

PAR. 7. The acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 7th day of March 1939, issued and served its complaint in this proceeding upon said respondent, Cuban Health Products, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 17, 1939, 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 and its counsel, Frederic P. Lee, 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, accepted, and filed, 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, Cuban Health Products, Inc., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business located at 125 East Kalamazoo Street, Lansing, Mich.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of importing, selling and distributing a food product under the name of "El Aguinaldo Cuban Honey." Respondent causes said product, when sold, to be shipped from its aforesaid place of business in the State of Michigan to said purchasers located in various States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 aforesaid business, the respondent has disseminated and has caused the dissemination of, false advertisements concerning its said product by the United States mails, by insertion in newspapers and in periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Used successfully in overcoming stomach ulcers, stomach disorders, bowel and colon troubles. A natural tissue builder for the weak and anemic.

If you suffer from stomach or intestinal ailments, or from asthma, colds and bronchial troubles, why not correct them with El Aguinaldo Cuban Wonder Honey.

You will want El Aguinaldo Cuban Honey for colds, coughs, bronchitis and asthma. It will clear your nose, throat and stomach of phlegm and mucous. * * * Stomach ulcers are relieved by El Aguinaldo Cuban Honey. * * * Physicians have had excellent results, too, in using this El Aguinaldo Cuban Honey for varicose ulcers. It is applied externally in this condition. * * * Children, or adults, who tire easily, are run down or are susceptible to colds are often in need of general systemic tonic. El Aguinaldo Cuban Honey is nature's own product—a natural tissue builder, toning the system and helping to restore the body to the strong, healthy condition nature meant for you to have. * * * You will want El Aguinaldo Cuban Honey to apply to cuts and burns.

Recommended as an aid in overcoming Asthma, Colds, Bronchitis, Stomach Ulcers, Varicose Ulcers.

Natural Asthma Relief, * * * Physicians report that many of their patients who have used this remarkable medicinal honey show a marked improvement from the first dose. The gasping, choking spasms are relieved.

In Stomach Ulcers—it reduces the free acid content, thus relieving the pain and irritation and giving the ulcerated surface a chance to heal. In Colitis—it tends to change the intestinal flora and reduces the mucous. In Bowel Distress—its antiseptic qualities aid in decreasing gas, mucous and belching. In Asthma—it tends to reduce the spasmodic attacks. In Bronchitis—its action helps loosen mucous and lessen the paroxysms. In Coughs—it has a soothing action and loosens tenacious phlegm.

Normalizing the Red and White Blood Count. Clinical tests show normalizing in from five to eight weeks.

Reducing the Free Acid Content in the Digestive Tract.

Loosing Phlegm and Reducing Mucous, Especially in Respiratory Conditions.

An imported food sensation for bronchial and asthma victims.

No family should be without this natural product as an insurance against ills.

El Aguinaldo Cuban Honey.

Bronchial and asthma victims praise its merits for the real benefits received during this season of the year.

El Aguinaldo Cuban Honey. A diet supplement aiding colds, asthma, bronchitis, digestive disorders.

PAR. 4. All of the said statements, together with similar statements appearing in respondent's literature, purport to be descriptive of respondent's food product. Through the statements and representations in all its advertising literature herein set out, and other statements of similar import and effect, respondent, directly or by inference, represents that its food product, El Aguinaldo Cuban Honey, is a competent and effective remedy for, and has curative value in the treatment of, coughs, colds, bronchitis, and asthma, and that its use will relieve these disorders; that it relieves stomach ulcers, is a tonic and tissue builder which will tone the system and restore the body; that it will heal and relieve cuts, bruises, and varicose ulcers; that it reduces the free acid content in the intestines and reduces the mucous in colitis and is a bowel antiseptic; and that it normalizes the blood count.

PAR. 5. Respondent's product is not an effective remedy or cure for coughs, colds, asthma, bronchitis, or similar respiratory disorders, and is not a competent treatment for these conditions, excepting that it may be a palliative for coughs due to local irritations of the throat, and when applied locally may have a soothing effect in the case of local irritations of the nose. It does not relieve the pain of stomach ulcers or have any curative value therefor; however, it can be used as a bland article of diet suitable for use wherever a bland diet is necessary, as in diets for the treatment of

gastric ulcers. It is not a tonic or tissue builder, nor will it tone the system or restore the body except to furnish easily assimilated food values. It will not heal cuts, bruises, or varicose ulcers, although when locally applied to cuts, bruises, and varicose ulcers it may serve as an adjunct to other forms of treatment for such conditions. It will not reduce the free acid contents of the intestines or the mucous in colitis. It is not a bowel antiseptic. It will not normalize the blood count. It has no value in the treatment of digestive disorders other than as a bland food; and the statements set forth in paragraph 3 above and similar statements made by respondent in its advertising literature are false, misleading, and untrue.

PAR. 6. Respondent's honey does not contain any alkaloids. It consists principally of water, levulose, and dextrose and differs little in composition from domestic honeys.

The use by the respondent of the foregoing false advertisements and deceptive and misleading statements and representations with respect to the food product, El Aguinaldo Cuban Honey, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondent's said product as the result of such erroneous and mistaken belief.

Further, the acts and practices of the respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may deceive or mislead members of the purchasing public into the erroneous belief that the aforesaid representations of respondent are true and into the purchase of said product because of said erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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 a stipulation as to the 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, the Cuban Health Products, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of honey in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a food product now designated by the name "El Aguinaldo Cuban Honey," or any other food product composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said food product, which advertisements represent, directly or through implication:

(*a*) That respondent's product is a cure or remedy for coughs, colds, asthma, bronchitis, or similar respiratory disorders, or that said product constitutes a competent treatment therefor, other than as a palliative for coughs due to local throat irritation or for local irritations of the nose.

(*b*) That respondent's product is a cure or remedy for stomach ulcers or that it constitutes a competent treatment therefor, other than as a bland food where a bland diet would be prescribed.

(*c*) That respondent's product is a tonic or will tone the system, restore the body, or constitute a tissue builder, other than to supply easily assimilated food values.

(*d*) That respondent's product will heal or cure cuts, bruises, or varicose ulcers, or that it is a competent treatment therefor, other than that local application of said product might serve as an adjunct to other forms of treatment.

(*e*) That respondent's product will reduce the free acid content of the intestines, reduce mucous, or otherwise favorably affect colitis, or act as a bowel antiseptic.

(*f*) That the use of respondent's product will normalize the blood count.

(*g*) That respondent's product is a cure or remedy for digestive disorders, or that said product is a competent treatment therefor other than as a bland food.

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

COTY, INC. AND COTY PRODUCTS CORPORATION 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 3325. Complaint, Mar. 23, 1938[1]*—Decision, Oct. 12, 1939*

Where a corporation engaged in packaging, labeling, bottling, offering, and selling perfumes which it purchased of its wholly owned subsidiary, and which were blended, compounded, and sold in accordance with the exact formulae originated in Paris, France, by the late M. Francois Coty of Paris, France, and said subsidiary, engaged in blending and compounding such products in the United States, from ingredients imported from France and other countries, with domestic alcohol to make completed perfume, and in selling its said products, thus made, to said parent corporation and to other purchasers, and in active and substantial competition with others engaged in sale and distribution of perfumes in commerce among the various States and in the District of Columbia, and including among their competitors domestic makers and distributors of perfumes who make, blend, and compound their products in the United States, and domestic competitors who do not in any way represent that their products are made, blended and compounded in any foreign country and then imported—

(*a*) Made such representations to promote sale of their products, through labels attached and affixed to cartons or containers thereof and through folders, price lists, and advertisements in newspapers and periodicals of general circulation, as "Coty—Paris—France," "Composé par Coty, Paris, France," and "Coty—bottled in U. S. A.—France"; and

(*b*) Caused to appear on cartons in which some of their said perfumes were packed and sold words "Cette specialite & ses Acessoires ont ete crees par Coty dans ses Usines de La Cite des Parfums a Suresnes pres Paris (France)," followed by further statement, in French, to the effect that products in question were exclusively those of Coty, Inc., for the United States, and words "ou ils sont fabriques," meaning of which, not supplied in English, was "where they are manufactured"; and

Where various subsidiaries of said corporation first referred to, through which its products aforesaid were distributed prior to said subsidiaries' dissolution—

(*c*) Caused their business stationery to bear, in addition to address of particular subsidiary, address "Parfums de Luxe, 25 Place Vendome, Paris";

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that their said products were made or compounded in France and imported into the United States, such as long widely popular and in demand among the trade and consuming public throughout the United States, and considered by many thereof as superior to perfumes made or compounded in the United States, and purchased by many of the consuming public in preference to latter, and into purchase

[1] Amended and supplemental.

of their said perfumes because of erroneous and mistaken belief induced as above set forth, and with result of thereby diverting trade unfairly to them from their competitors who do not in any way represent that their products are made, blended, and compounded in any foreign country and then imported into the United States, when in fact made or compounded therein:

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

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

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Percy A. Shay of Coudert Brothers and *Mr. Lewis G. Bernstein*, of New York City, for respondents.

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 5th day of February 1938, issued its complaint charging Coty, Inc., Coty Products Corporation, Coty Processing Co., Inc., Coty, Inc., New York, Coty Co., Ltd. of Maryland, Coty Co., Ltd. of Tennessee, Coty California Corporation, and Coty New Jersey Corporation, with certain unfair methods of competition in commerce as "commerce" is defined in said act; and it now appearing to the Commission that Coty Sales Corporation has been created under the laws of the State of Delaware and has taken oven the functions of some of the above-named corporations:

Now therefore, Pursuant to the provisions of the aforesaid act the Commission having reason to believe that Coty, Inc., Coty Products Corporation, Coty Processing Co., Inc., Coty, Inc., New York, Coty Co., Ltd. of Maryland, Coty Co., Ltd. of Tennessee, Coty California Corporation, Coty New Jersey Corporation, and the Coty Sales Corporation, 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 this its amended and supplemental complaint stating its charges in that respect as follows:

Paragraph 1. Coty, Inc., is a holding company organized under the laws of the State of Delaware, with its principal office in Wilmington, Del.

Coty Products Corporation, a subsidiary of Coty, Inc., is a New York corporation, with its principal place of business at 423 West

Fifty-fifth Street, New York City, N. Y. Coty Processing Co., Inc., a subsidiary of Coty, Inc., is a New York corporation, organized under the laws of the State of New York, with its principal office and place of business at 423 West Fifty-fifth Street, New York City, N. Y. Coty, Inc., of New York, a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business at 714 Fifth Avenue, New York City. Coty Co., Ltd., a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of Maryland, with its principal place of business at 25 East Lake Street, Chicago, Ill. Coty Co., Ltd., a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of Tennessee, with its principal place of business at 99 South Second Street, Memphis, Tenn. Coty California Corporation, a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of California, with its principal place of business at 833 Market Street, San Francisco, Calif. Coty New Jersey Corporation, a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business at 46 Clinton Street, Newark, N. J. Coty Sales Corporation, a subsidiary of Coty, Inc., is a corporation organized under the laws of the State of Delaware, with its office and principal place of business at 714 Fifth Avenue, New York City, N. Y.

Respondent, Coty, Inc., is a principal stockholder in and formulates, controls, and dominates the practices and policies of the other respondents. Said respondents have acted together and in cooperation with each other in carrying out the acts and practices and methods hereinafter alleged.

PAR. 2. Respondents are engaged in the business of manufacturing and compounding perfumes, and the sale and distribution of said perfumes in commerce as herein described. In the course of their business, when orders are received for their perfume products, respondents ship said products from their aforesaid places of business in the State of New York, or from some other place of business in the States of New York, Illinois, Tennessee, California, and New Jersey, to the purchasers thereof at their respective places of business in States of the United States other than the State of New York, or other than the State in which said respective shipments originated. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said perfumes sold and distributed by them between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are in active and substantial competition with other corporations, and

with partnerships and individuals engaged 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. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their products on the part of the purchasing public, cause certain labels to be attached and affixed to the containers of their said perfumes. These labels contain such statements as

Coty—Paris—France
Composé par Coty, Paris—France
Coty—Bottled in U. S. A.—France

With certain of their perfumes, respondents cause to appear, on their advertisement card written in French, the following statement:

Cette Spécialite & ses Accessoires ont étè créés
par Coty dans ses Usines de La Cite des Parfums A Suresnes pres Paris (France).

The translation of the foregoing statement is, "This specialty and its accessories were created by Coty in its factories in the City of Perfumes at Suresnes near Paris (France)." The translation does not appear on said statement. In the succeeding paragraph of said card, it is stated, in French, that said products are exclusively the property of Coty, Inc. for the United States of America, "ou ils sont fabriques," (where they are manufactured).

The subsidiary corporations which are respondents herein, also cause their business stationery to bear the following address:

Parfumes de Luxe 23 Place Vendome Paris

PAR. 4. The aforesaid statements, together with others similar thereto not set out herein, serve as representations on the part of respondents to members of the purchasing public that said perfumes, so described and labeled, are made and compounded in France and imported from that country into the United States.

PAR. 5. In truth and in fact the perfumes so labeled, described, represented, and referred to are not compounded or manufactured in France, or any other foreign country, but were, and all are, compounded and bottled in the United States of America.

PAR. 6. Perfumes manufactured in France have, for many years, enjoyed widespread popularity and demand among the trade and the consuming public throughout the United States, many of whom believe and consider that perfumes manufactured in France are superior in quality and other desirable characteristics to perfumes manufactured in the United States. Many of the consuming public throughout the United States purchase perfumes manufactured in France and

imported to the United States in preference to perfumes manufactured and compounded in the United States.

PAR. 7. There are, among the competitors of the respondents, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature and merit and origin of their respective products, and who refrain from advertising or representing that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 8. The use by the respondents of the aforesaid labeling and advertising, designating and describing their perfumes as set out hereinabove, has the capacity and tendency to and does mislead, confuse, and deceive their vendees and many of the consuming public into the mistaken and erroneous belief that said perfumes are manufactured and produced in France and imported into the United States, and into the purchase of said products as a result of such belief. Further, the acts and practices of respondents, as herein detailed, serve to place in the hands of unscrupulous or uniformed retail dealers a means and instrumentality whereby said dealers may mislead members of the purchasing public into the erroneous belief that said perfumes were, and are, manufactured and compounded in France, and into the purchase of respondents' products as a result of this belief.

As a result thereof, trade has been, and is, unfairly diverted to respondents, and those dealers who handle their products, from competitors who do not misrepresent the nature, quality, or origin of their respective competitive products. Thereby a substantial injury has been, and is, done to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. 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 the Federal Trade Commission Act, the Federal Trade Commission, on March 23, 1938, issued, and thereafter served its amended and supplemental complaint in this proceeding upon respondents Coty, Inc.; Coty Products Corporation; Coty Processing Co., Inc.; Coty, Inc. of New York; Coty Co., Ltd., a Maryland corporation; Coty Co., Ltd., a Tennessee corporation; Coty California Corporation; Coty New Jersey Corporation; and Coty

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', Coty, Inc., Coty Products Corporation, Coty Processing Co., Inc., and Coty Sales Corporation, answer thereto (respondents Coty, Inc. of New York, Coty Co., Ltd., a Maryland corporation, Coty Co., Ltd., a Tennessee corporation, Coty California Corporation, and Coty New Jersey Corporation having filed no answer), evidence in support of the allegations of said amended and supplemental complaint was introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of said amended and supplemental complaint by P. A. Shay of Coudert Brothers and L. G. Bernstein, attorneys for the respondents, before Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, and said evidence was 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 answer thereto, evidence and briefs in support of the allegations of the said amended and supplemental 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. Coty Processing Co., Inc., was a wholly owned subsidiary of Coty, Inc. It was a New York corporation organized and doing business under the laws of the State of New York. It had its principal office and place of business at 423 West Fifty-fifth Street, New York, N. Y.

PAR. 2. Coty, Inc., of New York, was a wholly owned subsidiary of Coty, Inc. It was a corporation organized under the laws of the State of New York, with its principal office and place of business located at 714 Fifth Avenue, New York, N. Y.

PAR. 3. Coty Co., Ltd., was a wholly owned subsidiary of Coty, Inc.; it was a corporation organized under the laws of the State of Maryland and had its principal place of business at 25 East Lake Street, Chicago, Ill.

PAR. 4. Coty Co., Ltd., was a wholly owned subsidiary of Coty, Inc. It was a corporation organized under the laws of the State of Tennessee. It had its principal place of business at 99 South Second Street, Memphis, Tenn.

PAR. 5. Coty California Corporation was a wholly owned subsidiary of Coty., Inc. It was a corporation organized under the laws of the State of California, with its principal place of business at 833 Market Street, San Francisco, Calif.

PAR. 6. Coty New Jersey Corporation was a wholly owned subsidiary of Coty, Inc., and was a corporation organized under the laws of the State of New Jersey, with its principal place of business at 46 Clinton Street, Newark, N. J.

PAR. 7. Coty Sales Corporation was a wholly owned subsidiary of Coty, Inc., and was a corporation organized under the laws of the State of Delaware, with its principal place of business located at 714 Fifth Avenue, New York, N. Y.

PAR. 8. All of the corporations named in paragraphs 1 to 7, supra, and wholly owned subsidiaries of Coty, Inc., were dissolved subsequent to the issuance and service of the Commission's amended and supplemental complaint and their functions taken over completely by respondent Coty Sales Corporation, and subsequently taken over by respondent Coty, Inc., a Delaware corporation, and their functions are now being performed by Coty, Inc.

PAR. 9. Coty Products Corporation is a wholly owned subsidiary of Coty, Inc. It is a New York corporation located at 423 West Fifty-fifth Street, New York. It is engaged in the blending and compounding of products hereinafter referred to. It sold to respondent, Coty Processing Co., Inc., until that corporation was dissolved, and it now sells to Coty, Inc., and other purchasers outside the Coty group.

PAR. 10. Coty, Inc., was a holding company solely at the time of issuance of the amended and supplemental complaint, organized under the laws of the State of Delaware, with its principal office in Wilmington, Del. Subsequent to issuance of the amended and supplemental complaint and subsequent to the dissolution of the corporations above referred to, it was qualified to do business in the State of New York, although its principal office is still in Wilmington, Del. This corporation, in addition to being a holding company, now engages and subsequent to the issuance of the amended and supplemental complaint did engage, in the business of packaging, labeling, and bottling, and offering for sale and selling perfumes.

PAR. 11. The respondents acted and cooperated together to the extent that Coty Products Corporation supplied bulk products to Coty Processing Co., Inc., which in turn packaged said products, affixed labels thereto and thereafter sold said products to Coty, Inc., of New York; Coty Co., Ltd., Maryland corporation; Coty Sales

Corporation, Coty Co., Ltd., Tennessee corporation; Coty, California corporation; and Coty, New Jersey corporation as hereinbefore and hereinafter stated.

PAR. 12. Respondent, Coty Products Corporation, was and now is engaged in the business of blending and compounding perfumes. Coty Processing Co.; Coty Co., Ltd., Maryland corporation; Coty, Inc. of New York; Coty Co., Ltd., Tennessee corporation; Coty, New Jersey corporation; Coty, California corporation; and Coty Sales Corporation were engaged in the business of selling the perfumes so blended and compounded in commerce as hereinafter set forth.

PAR. 13. In carrying on business when orders were received for perfume products, respondent Coty Processing Co., Inc., shipped its products from its place of business in the State of New York to the places of business of respondents, Coty Co., Ltd., Maryland corporation; Coty Co., Ltd., Tennessee corporation; Coty, New Jersey corporation; Coty Inc. of New York; Coty, California, and Coty Sales Corporation.

PAR. 14. Respondent Coty, Inc. of New York, in the conduct of its business, purchased said products from Coty Processing Co., Inc., which products were shipped by Coty Processing Co., Inc., from New York to Coty, Inc., of New York, in New York, and Coty, Inc., of New York, sold said perfume products to its customers wholly within the State of New York. The said products were also shipped by Coty Processing Company, Inc., from New York to Coty, New Jersey corporation in New Jersey. The Coty, New Jersey corporation, sold and shipped said products to its customers located wholly within the State of New Jersey. Respondent Coty, California corporation, in the conduct of its business purchased said products from Coty Processing Co., Inc., in New York, and sold and shipped these products to its customers throughout several States of the United States located on or adjacent to the Pacific coast; the respondent Coty Co., Ltd., a Tennessee corporation, in the conduct of its business purchased the said products from Coty Processing Co., Inc., in New York and sold and shipped these products to its customers in the State of Tennessee and in several other states in the southern part of the United States; Coty Co., Ltd., a Maryland corporation, in the conduct of its business purchased said products from Coty Processing Co., Inc., in New York and sold and shipped these products to its customers from one of its places of business in the State of Illinois in which State it was qualified to do business and to customers located in other States of the United States in the midwest part of the

United States; Coty Sales Corporation, from the period November 1, 1937, to June 30, 1938, sold and shipped said products to its customers located throughout the United States.

PAR. 15. From November 1, 1937, which was prior to the issuance and service of the amended and supplemental complaint, and subsequent to the issuance and service of the amended and supplemental complaint, and up to June 30, 1938, Coty Sales Corporation received orders from its customers in all the States of the United States and the District of Columbia and sold and shipped said products to its customers in the various States of the United States and in the District of Columbia.

PAR. 16. Respondent Coty, Inc., a Delaware corporation, subsequent to the issuance and service of the amended and supplemental complaint, namely, from the first day of July 1938, in the conduct of its business, performed and now performs the functions of Coty Processing Co., Inc.; Coty Co., Ltd., a Maryland corporation; Coty Co., Ltd., a Tennessee corporation; Coty, New Jersey corporation; Coty, California corporation; Coty, Inc. of New York; and Coty Sales Corporation.

PAR. 17. Respondents Coty Processing Co., Inc.; Coty, Inc. of New York; Coty Co., Ltd., a Maryland corporation; Coty Co., Ltd., a Tennessee corporation; Coty, California corporation; Coty, New Jersey corporation; and Coty Sales Corporation maintained, and Coty, Inc., and Coty Products Corporation maintained and still maintain a course of trade in said products sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 18. Respondents were and are in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 19. In the course and conduct of their business and for the purpose of promoting the sale of their products, respondents, by means of labels attached and affixed to the cartons or containers in which their products are packed and sold, and by means of folders, price lists, and advertisements inserted in newspapers and magazines having a general circulation among and between the States of the United States and in the District of Columbia, made certain representations, among which are the following appearing on the labels attached and affixed to the cartons or containers in which their

products are sold and distributed, of which the following are representative:

Coty—Paris—France
Composé par Coty, Paris, France
Coty—bottled in U. S. A.—France

PAR. 20. The respondents have caused to appear on the cartons in which some of their perfumes were packed and sold the following in the French language:

Cette specialite & ses Accessoires ont ete crees par Coty dans ses Usines de La Cite des Parfums a Suresnes pres Paris (France)

The English translation of the above statement is:

This specialty and its accessories were created by Coty in its factories in the City of Perfumes at Suresnes near Paris (France)

PAR. 21. The English equivalent for the French language does not appear on the said cartons or packages. In the following paragraph on said cartons or packages a statement in French is made that the products are exclusively the products of Coty, Inc., for the United States of America, "ou ils sont fabriques," which means, "where they are manufactured."

PAR. 22. The respondent subsidiary corporations of Coty, Inc., also caused their business stationery to bear the following address:

Parfums de Luxe
25 Place Vendome,
Paris

in addition to the address of the particular subsidiary.

PAR. 23. The perfumes labeled and described as herein set forth are blended or compounded in the United States of America from ingredients which are imported from France and other foreign countries, and to which is added, after importation, domestic alcohol, making a completed perfume. All perfumes or odors sold by Coty, Inc., are blended, compounded, and sold following the exact formulae originated in Paris, France, by the late M. Francois Coty, of Paris, France.

PAR. 24. Perfumes made or compounded have, for many years, enjoyed widespread popularity and demand among the trade and the consuming public throughout the United States, many of whom believe and consider that perfumes made, or compounded in France are superior in quality and other desirable characteristics to perfumes made or compounded in the United States.

PAR. 25. Many of the consuming public throughout the United States purchase perfumes made or compounded in France and im-

ported to the United States in preference to perfumes made, or compounded, in the United States.

PAR. 26. There are among the competitors of the respondents domestic makers and distributors of perfumes who make, blend, and compound their products in the United States. Some domestic competitors of respondents do not in any way represent that their products are made, blended, and compounded in any foreign country and then imported into the United States.

PAR. 27. The use of the statements and representations made by the respondents as herein set forth in connection with the sale and distribution of their products has had, and now has, the tendency and capacity to mislead and confuse a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that the respondents' products are made or compounded in France and imported into the United States and into the purchase of said perfume because of said erroneous and mistaken belief. As a result thereof trade has been diverted unfairly to the respondents from their competitors who do not in any way represent that their products are made, blended, and compounded in any foreign country and then imported into the United States, when in fact said products were made or compounded in the United States.

CONCLUSION

The aforesaid acts and practices of respondents as herein found 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 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, the answer of Coty, Inc., Coty Products Corporation, Coty Processing Co., Inc., and Coty Sales Corporation (Coty, Inc. of New York; Coty Co., Ltd. of Maryland; Coty Co., Ltd. of Tennessee; Coty, California corporation; and Coty, New Jersey corporation, having filed no answer) testimony and other evidence taken before Edward E. Reardon, 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, briefs filed herein, and oral arguments by S. Brogdyne Teu, II, counsel for the Commission, and Percy A. Shay, of counsel for the respondent, and the Commissions having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the

Federal Trade Commission Act, and it appearing to the Commission that the corporate respondents Coty Processing Co., Inc., Coty, Inc. of New York, Coty Co., Ltd., a Maryland corporation, Coty Co., Ltd., a Tennessee corporation, Coty, California corporation, Coty, New Jersey corporation, and Coty Sales Corporation have been dissolved;

It is ordered, That the respondents Coty, Inc., and Coty Products Corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of perfumes in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing through the use of the term "Paris" or "Paris, France," or of any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such product, or in any manner that perfumes which are made or compounded in the United States are made or compounded in France, or in any other foreign country; provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such product is made or compounded in the United States.

2. Using any French or other foreign terms or words, except as provided in paragraph 3 hereof, to designate, describe, or in any way to refer to perfumes made or compounded in the United States, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

3. Using the terms "Coty, Parfums de Luxe" or any other French or other foreign words or terms as brand or trade names for perfumes made or compounded in the United States, without clearly and conspicuously stating in immediate connection and conjunction therewith that such product is made or compounded in the United States.

It is further ordered, That this proceeding, insofar as the same relates to Coty Processing Co., Inc.; Coty, Inc. of New York; Coty Co., Ltd., a Maryland corporation; Coty Co., Ltd., a Tennessee corporation; Coty, California corporation; Coty, New Jersey corporation, and Coty Sales Corporation, be, and the same hereby is, closed without prejudice to the right of the Commission, should the future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

It is further ordered, That the respondents, Coty, Inc., and Coty Sales Corporation, 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

MORTON SALT COMPANY

CEASE AND DESIST ORDER

Docket 2150. Order, Oct. 17, 1939

Order requiring respondent, its officers, etc., in instant proceeding (following Commission's complaint, etc., findings, and order of April 30, 1935, 20 F. T. C. 309, placement of matter *in fieri* pending decisions in related salt cases, and the making of such decisions therein) to cease and desist from using the words "smoked" or "smoke," etc., to designate, etc., salt offered and sold by it and which had not been directly subjected to action and effect of smoke from burning wood, etc., for curing, preserving, smoking, or flavoring meats, as in said original proceeding required and in said cease and desist order below set forth.

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

Mr. Jay L. Jackson for the Commission.

Mr. H. H. Shelton and *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., for respondent.

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint issued and served upon respondent, Morton Salt Co., and its answer thereto, testimony, evidence, briefs, and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts and its conclusion drawn therefrom that the respondent has been and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission having, on April 30, 1935 entered and issued its order requiring the respondent, Morton Salt Co., its officers, agents, employees, and representatives, in connection with offering for sale or selling salt in interstate commerce or in the District of Columbia, to cease and desist, on brands or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from using the word "smoked" or the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly

subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats, and further ordering said respondent to file within 60 days from the service of said order a report in writing setting forth the manner and form of its compliance therewith; and by order duly entered herein on June 28, 1935 having extended the time for filing report of compliance with said order from July 31, 1935 to August 30, 1935; and by order duly entered hereon on June 17, 1936 having stayed said proceeding until final decision by the Commission in the matters of Smoke Products Co., et al., Docket 2783, and Pennsylvania Salt Manufacturing Co. et al., Docket 2784; and by order duly entered hereon on April 21, 1938 having directed that this matter 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 2783 and 2784, and the Commission having made its final decision in the matters of Dockets 2783 and 2784, and having duly entered and issued its findings as to the facts and conclusions and orders to cease and desist in these matters, and having duly considered the record herein;[1]

It is ordered, That respondent, Morton Salt Co., its officers, agents, employees, and representatives in connection with offering for sale, sale, or distribution of salt in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "smoked" or the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

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.

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[1] See, for said decisions, pp. 1136 and 1143, *infra*.

IN THE MATTER OF

JEFFERSON ISLAND SALT COMPANY

CEASE AND DESIST ORDER

Docket 2151. Order, Oct. 17, 1939

Order requiring respondent, its officers, etc., in instant proceeding (following Commission's complaint, etc., findings, and order of April 30, 1935, 20 F. T. C. 320, placement of matter *in fieri* pending decisions in related salt cases, and the making of such decisions therein) to cease and desist from using the words "smoked" or "smoke," etc., to designate, etc., salt offered and sold by it and which had not been directly subjected to action and effect of smoke from burning wood, etc., for curing, preserving, smoking or flavoring meats, as in said original proceeding required and in said cease and desist order below set forth.

Before *Mr. Robert S. Hall*, trial examiner.
Mr. Jay L. Jackson for the Commission.
Carroll, McElwain & Ballantine, of Louisville, Ky., for respondent.

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint issued and served upon respondent, Jefferson Island Salt Co., and its answer thereto, testimony, evidence, briefs, and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts and its conclusion drawn therefrom that the said respondent has been and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission having, on April 30, 1935, entered and issued its order requiring the respondent, Jefferson Island Salt Co., its officers, agents, employees, and representatives, in connection with offering for sale or selling salt in interstate commerce or in the District of Columbia to cease and desist on brands, or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from using the word "smoked" or the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect

of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats, and further ordering said respondent to file within 60 days from the service of said order a report in writing setting forth the manner and form of its compliance therewith, and having by order duly entered herein on July 27, 1935, extended the time for filing report of compliance with said order from 60 days after the service thereof to September 15, 1935; and by order duly entered herein on March 5, 1937 having stayed said proceedings until final decision by the Commission in the matters of Smoke Products Co., et al., Docket 2783, and Pennsylvania Salt Manufacturing Co., et al., Docket 2784; and by order duly entered herein on May 20, 1938 having directed that this matter 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 2783 and 2784, and the Commission having made its final decision in the matters of Dockets 2783 and 2784, and having duly entered and issued its findings as to the facts and conclusions and orders to cease and desist in these matters, and having duly considered the record herein.[1]

It is ordered, That the respondent, Jefferson Island Salt Co., its officers, agents, employees, and representatives, in connection with the offering for sale, sale, or distribution of salt in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "smoked" or the word "smoke," or any other word or words signifying smoke, or implying the use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking or flavoring meats.

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.

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[1] See, for said decisions, pp. 1136 and 1143, *infra*.

IN THE MATTER OF

AVERY SALT COMPANY

CEASE AND DESIST ORDER

Docket 2248. Order, Oct. 17, 1939

Order requiring respondent, its officers, etc., in instant proceeding (following Commission's complaint, etc., findings, and order of November 28, 1936, 23 F. T. C. 1047, placement of matter *in fieri* pending decisions in related salt cases, and the making of such decisions therein) to cease and desist from using word "smoke," etc., to designate, etc., salt offered and sold by it and which had not been directly subjected to action and effect of smoke from burning wood, etc., for curing, preserving, smoking, or flavoring meats, and from representing that its said "Avery Sugar Curing Smoke Salt" does the complete job of curing and smoking meat, or that meat, by treatment with such product, acquires therefrom same taste, etc., as meat acquires from treatment with salt and subsequent exposure to smoke of burning wood, as in said original proceeding required, and in said cease and desist order below set forth.

Before *Mr. Charles F. Diggs* and *Mr. Robert S. Hall*, trial examiners.

Mr. Jay L. Jackson for the Commission.

Putney, Twombly & Hall, of New York City, for respondent.

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 in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral argument by counsel for the Commission and counsel for the respondent, and the Commission having made its report stating its findings as to the facts and its conclusion that said respondent has been and is violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission having, on November 28, 1936, duly entered and issued its order requiring the respondent, Avery Salt Co., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of salt in interstate commerce or in the District of Columbia, to cease and desist from certain practices, and further ordering said respondent to file within 60 days after the service of said order a report in writing setting forth in detail the manner and form of its compliance therewith;

and by order duly entered herein on March 5, 1937 having extended the time for filing respondent's report as to the manner and form of its compliance with said order until such time as the Commission has rendered its final decision in the matters of Smoke Products Co., et al., Docket 2783, and Pennsylvania Salt Manufacturing Co., et al., Docket 2784; and by order duly entered herein on May 20, 1938 having directed that this matter 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 Dockets 2783 and 2784, and the Commission having made its final decision in the matters of Dockets 2783 and 2784, and having duly entered and issued its findings as to the facts and conclusions and orders to cease and desist in these matters, and having duly considered the record herein;[1]

It is ordered, That the respondent, Avery Salt Co., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of salt in interstate commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking or flavoring meats.

2. Representing that its product described or designated as "Avery Sugar Curing Smoke Salt" does the complete job of curing and smoking meat, or that meat by treatment with such product acquires therefrom the same taste or flavor or other properties or effects, as meat acquires from treatment with salt and subsequent exposure to the smoke of burning wood during the process and course of its combustion.

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.

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[1] See, for said decisions, pp. 1136 and 1143, *infra*.

IN THE MATTER OF

CAREY SALT COMPANY

CEASE AND DESIST ORDER

Docket 2516. Order, Oct. 17, 1939

Order requiring respondent, its officers, etc., in instant proceeding (following Commission's complaint, etc., findings, and order of December 3, 1936, 24 F. T. C. 42, placement of matter *in fieri* pending decisions in related salt cases, and the making of such decisions therein) to cease and desist from using the word "smoke" to designate, etc., salt offered and sold by it and which had not been directly subjected to action and effect of smoke from burning wood, etc., for curing, preserving, smoking, or flavoring meats, and from representing that its so-called "smoke" salt cures and smoke-flavors meat in one operation, or cures and smokes meat at all, or that treatment of meat with its product is a thousand times better than the old smoke house, or as good, or that meat thereby acquires same taste or flavor, etc., as it acquires from treatment with salt and subsequent exposure to smoke from burning wood, etc., as in said original proceeding required, and in said cease and desist order below set forth.

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

Mr. Jay L. Jackson for the Commission.

Williams, Martindell, Carey & Brown, of Hutchinson, Kans., for respondent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the stipulation as to certain facts and testimony and evidence in support of the allegations of the complaint and in opposition thereto, briefs filed herein by counsel for the Commission and counsel for the respondent, and the Commission having made its report in writing stating 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," and the Commission having, on December 3, 1936 issued an order requiring the respondent, Carey Salt Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of salt in interstate commerce or in the District of Columbia, do forthwith cease and desist from certain practices, and further ordering said respondent to file within 60 days from and after the service of said order a report in writing setting forth in detail the manner and form of its compliance therewith, and

by order duly entered herein on March 5, 1937 having extended the time for filing report of compliance with said order until such time as the Commission rendered its final decision in the matters of Smoke Products Co., et al, Docket 2783, and Pennsylvania Salt Manufacturing Co., et al., Docket 2784; and by order duly entered herein on May 20, 1938 having directed that this matter 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 Dockets 2783 and 2784, and the Commission having made its final decision in the matters of Dockets 2783 and 2784, and having duly entered and issued its findings as to the facts and conclusions and orders to cease and desist in these matters, and having duly considered the record herein;[1]

It is ordered, That the respondent, Carey Salt Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of salt in interstate commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "smoke," or any other word or words signifying smoke or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

2. Representing that its so-called smoke salt cures and smoke-flavors meat in one operation or that it cures and smokes meat at all or that treatment of meat with its said product is a thousand times better than the old smokehouse or as good or that meat by treatment with such product acquires therefrom the same taste or flavor or other properties or effects, as meat acquires from treatment with salt and subsequent exposure to the smoke from burning wood during the process and course of its combustion.

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.

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[1] See, for said decisions, pp. 1136 and 1143, *infra*.

IN THE MATTER OF

SMOKED PRODUCTS COMPANY AND THE SMOKED SALT 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 2783. Complaint, Apr. 24, 1936—Decision, Oct. 18, 1939

Where two corporations engaged in manufacture, offer and sale of their "smoked salt"; in advertising their said products through magazines, newspapers, booklets, pamphlets, and radio broadcasts—

Represented that meat cured or treated with "smoked salt" would be or was thereby subjected to smoke, and that "smoked salt" accomplished and did and could do all or everything that an old smokehouse could do in the curing or smoking of meat, through such statements, among others, as "The curing salt that puts actual hickory smoke into your meats," "* * * prepared by a patented process which coats each grain of salt with genuine hickory wood smoke," "* * * the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smoke-house * * *," "* * * gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse," and "* * * sugar-cures and actually puts genuine hickory wood smoke into meats in one operation," and "All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing";

Facts being when meat was cured and treated with their product it would not be and was not thereby subjected to smoke as such, and said product did not and could not do all or everything that the old smokehouse can and did do with respect to curing and smoking of meats;

With effect of misleading and deceiving members of purchasing public into the belief that said representations were true, and into purchase of their said products in reliance upon such belief, and of diverting trade to them from competitors who do not misrepresent the efficacy of their products:

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

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

Mr. Jay L. Jackson for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., and *Kunkel & Kunkel*, of Cincinnati, Ohio, for respondents.

COMPLAINT [1]

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

[1] By stipulation of the parties approved by the Commission on October 13, 1939, it was stipulated and agreed that the complaint be considered as amended by alleging, in addition

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Smoked Products Co., a corporation, and The Smoked Salt Co., Inc., hereinafter called respondents, have been and are, and that each of them 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, Smoked Products Co., has been for several years last past, and now 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 Cincinnati, in the State of Ohio, and a factory at Wyandotte, in the State of Michigan. Respondent, Smoked Products Co., is the owner and holder of certain patents covering or embracing the process of manufacturing so-called "smoked salt," and it has also been engaged in the sale and distribution of so-called "smoked salt" in commerce among and between the various States of the United States directly and through respondent, The Smoked Salt Co., Inc., a subsidiary, and also through a licensee under such patents, the Pennsylvania Salt Manufacturing Co., of Philadelphia, Pa.

Respondent, The Smoked Salt Co., Inc., has been for several years last past and now is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Cincinnati, in the said State of Ohio. It has also engaged in the sale in commerce among and between the various States of the United States of so-called "smoked salt." Respondent, Smoked Products Co., owns the stock of respondent, The Smoked Salt Co., Inc., controls and directs its business and dominates its affairs.

Respondents, Smoked Products Co. and The Smoked Salt Co., Inc., and also the licensee of respondent Smoked Products Co., Pennsyl-

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to what is already alleged in the complaint, that the representations set out in subparagraph 2 of paragraph 2 of the complaint herein, and in subparagraph 3 of paragraph 2 of the complaint herein also tend to mislead and deceive the purchasing public into the erroneous beliefs that by the use of "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)," the meat itself will be smoked, and that the products, namely, "Old Hickory Smoked Salt," and "Old Hickory Smoked Salt (Sugar Cure)" do everything that the old smokehouse did, and to purchase from respondents "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)" in reliance upon such erroneous belief; that such practice of respondents has had and still has the capacity and tendency to divert and has diverted trade to respondents from competitors offering for sale or selling salt in interstate commerce, and further that the proposed substitute answer of respondents, dated April 17, 1939, to the complaint herein, if permitted by the Federal Trade Commission to be filed in lieu of the answer of the respondents filed May 27, 1936, should be considered as the substitute answer to the said complaint as amended by this stipulation.

vania Salt Manufacturing Co., transport or cause to be transported the so-called "smoked salt" from their said places of business at Cincinnati, in the State of Ohio, or from the factory of respondent, Smoked Products Co., at Wyandott, Mich., into and through the various States of the United States to purchasers of such so-called "smoked salt" at their various points of location.

Respondents in the course and conduct of their said business, have been and are engaged in competition with individuals, partnerships, and corporations offering for sale and selling salt in interstate commerce.

PAR. 2. In the course and conduct of their business as described in paragraph 1, respondents have offered for sale and sold, and each of them has offered for sale and sold, a product which they have, and each of them has, described and designated as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)."

Respondents have advertised such products by or through magazines, newspapers, booklets, pamphlets and radio broadcasting, and in the course of such advertisements they have employed the following and other similar statements and representations purporting to be descriptions of their products:

The curing salt that puts actual hickory smoke into your meats.

Old Hickory is prepared by a patented process which coats each grain of salt with genuine hickory wood smoke.

In the preparation of Old Hickory *Smoked* Salt, the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smokehouse * * * And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory Smoked Salt—because it is pure salt coated with genuine hickory smoke—gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse.

Old Hickory Smoked Salt sugar-cures and actually puts genuine hickory wood smoke into meats in one operation.

And said respondents further caused their said product to be advertised by means of a radio broadcast, in the course of which the following statements and representations were made:

All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing.

In truth and in fact the word "smoked" when employed to designate or describe salt for use in curing and preserving or for use in smoking or flavoring meats signifies and means that the salt so designated or described has been directly subjected to the action and effect of, or directly impregnated or treated with, the smoke of burning wood during its course of combustion without intervening

agencies, electrical or otherwise, sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing and preserving or smoking or flavoring meats.

The product of respondents Smoked Products Co. and The Smoked Salt Co., Inc., has not been and is not subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion. In the manufacture of their so-called "Smoked Salt" the salt has not been and is not exposed to hickory wood smoke just like meat is exposed to wood smoke in the old fashioned smoke-house. The use of such so-called "smoked salt" does not transmit the same elements, substances, or properties or produce, or have the same effect or effects upon meats as does the method or process known as the smoke-house process or method, or as does the actual smoking of the meat itself in or by smoke as smoke is recognized and understood by the public.

PAR. 3. There have been for many years last past and now are competitors of respondents engaged in the sale of salt in interstate commerce, truthfully represented and described, for curing or preserving, or smoking, or flavoring meats.

PAR. 4. The practice of respondents, Smoked Products Co., and The Smoked Salt Co., Inc., in advertising their product as described in paragraph 2 hereof and in offering for sale and selling it as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar-Cure)," has had and has the capacity and tendency to mislead and deceive, and has mislead and deceived, and does mislead and deceive the purchasing public into the belief that such product has been subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion sufficiently to acquire from such source alone its smoke or smoke effects, and into the purchase of respondents' Old Hickory Smoked Salt and Old Hickory Smoked Salt (Sugar-Cure) in reliance upon such erroneous belief.

Such practice of respondents also has had and has the capacity and tendency to divert and has diverted and does divert trade to respondents from competitors offering for sale or selling salt in interstate commerce.

PAR. 5. The above and foregoing practice of respondents has been and is all to the prejudice of the public and respondents' competitors, and 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 24, 1936, issued and served its complaint in this proceeding upon respondents, Smoked Products Co. and The Smoked Salt 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 of the said complaint and the filing of respondents' answer thereto, the Commission, by order herein, granted respondents' motion for permission to withdraw said answer and to file in lieu thereof a substitute answer, and in connection therewith approved and filed a stipulation, executed by respondents' counsel, Messrs. Kunkel & Kunkel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, agreeing and stipulating that the Commission's complaint be considered as amended as therein provided and that said substitute answer be considered as a substitute answer to said complaint as amended. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, as amended, substitute answer and stipulation and upon respondents' motion for disposition of the case upon the pleadings, 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, Smoked Products Co. and The Smoked Salt Co., Inc., have been and are now corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with their principal places of business located at Fifth and Butler Streets, in the city of Cincinnati, of said State. At all times material hereto respondents have been and are now engaged in the business of manufacturing, offering for sale, and selling a salt product, otherwise known as "smoked salt," in commerce among and between the various States of the United States, and in causing the same when sold or ordered to be shipped and transported to purchasers thereof located in States of the United States other than the State of origin of said shipment.

In the course and conduct of their aforesaid business, and at all times material hereto, respondents have been and are now engaged in competition with individuals, partnerships, and other corporations offering for sale and selling salt in interstate commerce.

PAR. 2. In the course and conduct of their aforesaid business respondents have offered for sale and sold, and each of them has offered for sale and sold, salt products designated and described as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar cure)" and advertised such products by and through magazines, newspapers, booklets, pamphlets, and radio broadcasts, and in the course of such advertisements have employed and employ the following and other similar statements and representations purporting to be descriptive of their said products:

The curing salt that puts actual hickory smoke into your meats.

Old Hickory is prepared by a patented process which coats each grain of salt with genuine hickory wood smoke.

In the preparation of Old Hickory *Smoked* Salt, the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smoke-house * * * And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory Smoked Salt—because it is pure salt coated with genuine hickory smoke—gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse.

Old Hickory Smoked Salt sugar-cures and actually puts genuine hickory wood smoke into meats in one operation.

And said respondents further caused their said product to be advertised by means of a radio broadcast, in the course of which the following statements and representations were made:

All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing.

PAR. 3. The aforesaid statements and representations imply and represent that meats which are cured or treated with respondents' "smoked salt" product will be or is thereby subjected to smoke and that said product when applied to meat accomplishes, does, or can do all or everything that an old smokehouse does or can do. In truth and in fact, when meat is cured and treated with respondents' said product, the same will not be and is not thereby subjected to smoke as such, and said product does not and cannot do all or everything that the old smokehouse can do or does with respect to the curing and smoking of meats.

PAR. 4. The aforesaid representations as so made by respondents have had and have a capacity and tendency to mislead and deceive, and do mislead and deceive, members of the purchasing public into the belief that said representations are true and into the purchase of respondents' said products in reliance upon such erroneous belief, and the same have had the capacity and tendency to divert, and do divert, trade to respondents from competitors who do not misrepresent the efficacy of their products.

CONCLUSION

The aforesaid acts and practices of respondents, Smoked Products Co. and The Smoked Salt Co., Inc., 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 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, as amended by stipulation, the substitute answer of respondents and upon respondents' motion that the case be disposed of on the pleadings, 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 respondents, Smoked Products Co., a corporation and The Smoked Salt Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of their salt products in interstate commerce, do forthwith cease and desist from:

1. Representing that meat cured or treated with "smoked salt" will be or is thereby subjected to smoke, or

2. Representing that "smoked salt" accomplishes, does, or can do all or everything that an old smokehouse does in the curing or smoking of meat.

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.

IN THE MATTER OF

PENNSYLVANIA SALT 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 2784. Complaint, Apr. 24, 1936—Decision, Oct. 18, 1939

Where a corporation engaged in manufacturing, offering, and selling its "smoked salt" to purchasers in other States; in advertising its said "Old Hickory Smoked Salt" through magazines, newspapers, booklets, pamphlets, and radio broadcasts—

Represented that meat cured or treated with "smoked salt" would be or was thereby subjected to smoke, and that "smoked salt" accomplished and did and could do all or everything that an old smokehouse could do in the curing or smoking of meat, through such statements, among others, as "* * * eliminates the old-fashioned smokehouse, with its extra steps and its fire hazard, because Old Hickory cures and smokes in one operation," "Why bother with the old-fashioned smokehouse when you can salt, sugar-cure, and smoke the most delicious meats you ever tasted, with Old Hickory Brand Smoked Salt all in one operation?", and "All that a smokehouse can do is to put hickory smoke into your meats * * * Old Hickory Brand Smoked Salt does the same thing";

Facts being when meat was cured and treated with its product it would not be and was not thereby subjected to smoke as such, and said product did not and could not do all or everything that the old smokehouse can and did do with respect to curing and smoking of meats;

With effect of misleading and deceiving members of purchasing public into the belief that said representations were true, and into purchase of its said product in reliance upon such belief, and of diverting trade to it from competitors who do not misrepresent the efficacy of their products:

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

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

Mr. Jay L. Jackson for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., for respondent.

COMPLAINT [1]

Pursuant to the provisions of an act of Congress approved September 26, 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 Pennsyl-

[1] By order dated May 21, 1936, Commission granted application to dismiss complaint as to General Laboratories, Inc., because of its dissolution on December 31, 1935, prior to the issuance of such complaint.

By stipulation of the parties approved by the Commission on October 13, 1939, it was stipulated and agreed that the complaint be considered as amended by alleging, in addition to what is already alleged in the complaint, that the representations set out in para-

vania Salt Manufacturing Co. and General Laboratories, Inc., hereinafter designated respondents, have been and are, and that each of them 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, Pennsylvania Salt Manufacturing Co., 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 Pennsylvania, with its principal office and place of business at Philadelphia, in said State. It is now, and for several years last past has been, engaged in the manufacture of various products, including salt, and in the sale of its products among and between the various States of the United States directly and through its subsidiary, respondent, General Laboratories, Inc. It operates plants both in the State of Pennsylvania and in the State of Michigan.

Respondent, General Laboratories, Inc., is now and for several years last past has been 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 in the city of Philadelphia in the State of Pennsylvania, and engaged in the sale of salt in commerce among and between the various States of the United States. It has been and is a subsidiary of respondent, Pennsylvania Salt Manufacturing Co., which owns all of its stock, supervises, directs, dominates, and controls its business.

It has been and is the practice of respondents to cause their product when sold to be transported from their place of business in the State of Pennsylvania, or from their operating plant which is situated at Wyandott in the State of Michigan, to purchasers located in various other States of the United States.

In the course and conduct of their business respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have been and now are, and each of them has been and now is in competi-

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graph 2 of the complaint herein tend to mislead and deceive the purchasing public into the erroneous beliefs that by the use of "Old Hickory Smoked Salt," the meat itself will be smoked, and that the product, namely, "Old Hickory Smoked Salt," does everything that the old smokehouse did, and to purchase from respondents "Old Hickory Smoked Salt" in reliance upon such erroneous beliefs; that such practice of respondents has had and still has the capacity and tendency to divert and has diverted trade to respondents from competitors offering for sale or selling salt in interstate commerce, and further that the proposed substitute answer of respondents, dated April 17, 1939, to the complaint herein, if permitted by the Federal Trade Commission to be filed in lieu of the answer of the respondents filed May 27, 1936, should be considered as the substitute answer to the said complaint as amended by this stipulation.

tion with individuals, partnerships and corporations engaged in the sale of salt in interstate commerce.

PAR. 2. In the course and conduct of their business as described in paragraph 1, respondents have offered for sale and sold, and each of them has offered and sold, a product which they have and each of them has described and designated, and continue to describe and designate as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar-Cure)."

Respondents have widely advertised, and continue to advertise, such product by or through magazines, newspapers, booklets, pamphlets, and radio broadcasting. In their advertisements by radio broadcasting it has been and is the practice of respondents to emphasize the value of their said product by reference to its alleged character as "Smoked Salt." The following is typical of their representations and of the representations of each of them in such forms of advertising:

EARLY MORNING MARKETS

Opening Announcement: "Each morning, except Sunday, at this time, the market comes to you through courtesy of the makers of Old Hickory Smoked Salt. Listen in for the free offer of a meat curing book which Old Hickory will make in a moment."

Closing Announcement: "Insist on Old Hickory Smoked Salt. Be sure that the salt you buy bears the Old Hickory Label so that you will get the true wood smoke flavor. Old Hickory is the original and genuine smoke salt, and to get the BEST results, you should insist on Old Hickory."

* * * * * * *

Old Hickory Smoked Salt eliminates the old-fashioned smokehouse, with its extra steps and its fire hazard, because Old Hickory cures and smokes in ONE operation.

Why bother with the old-fashioned smokehouse when you can salt, sugar-cure and smoke the most delicious meats you ever tasted, with Old Hickory Brand Smoked Salt all in one operation?

All that a smokehouse can do is to put hickory smoke into your meats * * * Old Hickory Brand Smoked Salt does the same thing.

The flavor is delicious and think of the time and bother it saves! You get a rich sugar cure, and smoking all in one operation.

* * * * * * *

Respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have further caused the following representations and statements to appear in printed advertisements and advertising matter circulated or distributed among purchasers and prospective purchasers in the various States of the United States:

Smokes and sugar cures.

The Curing Salt that puts actual hickory-smoke into your Meats.

Old Hickory Smoked Salt sugar-cures and actually puts genuine hickory-wood smoke into meats in one operation.

Delicious, savory hams and bacon with the genuine hickory smoke flavor! That's what you get when you cure your meat with Old Hickory Smoked Salt because Old Hickory is actually smoked with genuine hickory-wood smoke.

Old Hickory is prepared by a patented process which coats each grain of salt with hickory-wood smoke. Thus, Old Hickory Smoked Salt penetrates, curing and flavoring every fibre of the meat, quickly and uniformly, from rind to bone—all in one operation.

Old Hickory Smoked Salt (sugar cure is a complete cure—it salts, sugar cures and puts actual hickory-wood smoke into meat in one operation).

Respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have further caused the following representations and statements to appear in printed advertisements and advertising matter circulated or distributed among purchasers and prospective purchasers in various States of the United States:

Old Hickory Smoked Salt is pure salt smoked with genuine hickory smoke that delights the palate of the most fastidious.

Why You Should Use Only Old Hickory for Smoked Salt Curing. Old Hickory Smoked Salt is the only curing salt that gives a genuine, wholesome, delicious hickory flavor to meats because Old Hickory is the only curing salt that is actually smoked with genuine hickory wood smoke.

This famous Old Hickory salt-curing method was originated, perfected and patented by meat-curing experts. By using Old Hickory, you eliminate all the drudgery, dirt, danger and doubt of the old-fashioned smokehouse * * * cure and smoke and at the same time * * * and retain all the natural goodness and health-giving qualities of the fresh meat itself.

Only with genuine Old Hickory Smoked Salt can you get these outstanding meat-curing results. And here is why this is so. In the preparation of Old Hickory *Smoked* Salt, the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smokehouse. Huge rotating drums, containing 99.6% pure white salt, are used. Into these drums the smoke of the hickory wood is forced, until every grain of salt is thoroughly coated with the flavor, color and fragrance of hickory smoke. And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory is unlike other curing salts because it is salt actually smoked with hickory smoke. Curing with Old Hickory Smoked Salt gives that same delicious flavor which has made Virginia hams famous throughout the world.

Old Hickory Smoked Salt—because it is pure salt coated with genuine hickory smoke—gets the smoke farther and faster into the meat than when meat is smoked in a smoke-house. The pure salt in Old Hickory cures the meat quickly and thoroughly right through to the bone. The hickory smoke goes right along with the salt, giving that delicious appetizing flavor, which only Old Hickory Smoked Salt can give.

There is only one
genuine *Smoked* Salt—
Old Hickory!

In truth and in fact the word "smoked," when used to designate or describe salt for use in curing and smoking or flavoring meats,

signifies and means to the purchasing public that the product so designated and described has been subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during the course of its combustion without intervening agencies, electrical or otherwise, sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing and smoking or flavoring meats.

The product of respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., has not been and is not subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion. In the manufacture of their so-called "Smoked Salt" the salt has not been and is not "exposed to hickory wood smoke just like meat is exposed to smoke in the old fashioned smoke-house," nor does use of respondents' product give to hams "that same delicious flavor which has made Virginia hams famous throughout the world." The use of such so-called smoked salt does not transmit the same elements, or substances, or properties or produce or have the same effects upon meats as does the method or process known as the smoke-house method or process, or as does the smoking of the meat itself by or in smoke as it is recognized and understood by the public.

PAR. 3. There have been for many years last past and now are competitors of respondents engaged in the sale of salt in interstate commerce, truthfully represented and described, for curing or preserving or smoking or flavoring meats.

PAR. 4. The practice of respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., in advertising their product as described in paragraph 2 hereof and in offering for sale and selling it as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar-Cure)," has had and has the capacity and tendency to mislead and deceive, and has mislead and deceived, and does mislead and deceive the purchasing public into the belief that such product has been subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion sufficiently to acquire from such source alone its smoke or smoke effects, and into the purchase of respondents' Old Hickory Smoked Salt and Old Hickory Smoked Salt (Sugar-Cure) in reliance upon such erroneous belief.

Such practice of respondents also has had and has the capacity and tendency to divert and has diverted and does divert trade to respondents from competitors offering for sale or selling salt in interstate commerce.

PAR. 5. The above and foregoing practice of respondents has been and is all to the prejudice of the public and respondents' competitors, and 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 24, 1936, issued and served its complaint in this proceeding upon respondent, Pennsylvania Salt Manufacturing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the said complaint and the filing of respondent's answer thereto, the Commission, by order herein, granted respondent's motion for permission to withdraw said answer and to file in lieu thereof a substitute answer, and in connection therewith approved and filed a stipulation, executed by respondent's counsel, Arlon V. Cushman, of Messrs. Cushman, Darby and Cushman, and W. T. Kelley, chief counsel for the Federal Trade Commission, agreeing and stipulating that the Commission's complaint be considered as amended as therein provided and that said substitute answer be considered as a substitute answer to said complaint as amended. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, as amended, substitute answer and stipulation and upon respondent's motion for disposition of the case upon the pleadings, 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, Pennsylvania Salt Manufacturing Co., has been and is now 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 in the Widner Building in the city of Philadelphia of said State. At all times material hereto respondent has been and is now engaged in the business of manufacturing, offering for sale and selling a salt product, otherwise known as "smoked salt," in commerce among and between the various States of the United States, and in causing the same when sold or

ordered to be shipped and transported to purchasers thereof located in States of the United States other than the State of origin of said shipment.

In the course and conduct of its aforesaid business, and at all times material hereto, respondent has been and is now engaged in competition with individuals, partnerships, and other corporations offering for sale, and selling, salt in interstate commerce.

PAR. 2. In the course and conduct of its aforesaid business respondent has offered for sale and sold salt products designated and described as "Old Hickory Smoked Salt," and advertised such products by and through magazines, newspapers, booklets, pamphlets, and radio broadcasts, and in the course of such advertisements has employed and employs the following and other similar statements and representations purporting to be descriptive of its said products:

Old Hickory Smoked Salt eliminates the old-fashioned smokehouse, with its extra steps and its fire hazard, because Old Hickory cures and smokes in One operation.

Why bother with the old-fashioned smokehouse when you can salt, sugar-cure and smoke the most delicious meats you ever tasted, with Old Hickory Brand Smoked Salt all in one operation?

All that a smokehouse can do is to put hickory smoke into your meats * * * Old Hickory Brand Smoked Salt does the same thing.

The flavor is delicious and think of the time and bother it saves! You get a rich sugar cure, and smoking all in one operation.

PAR. 3. The aforesaid statements and representations imply and represent that meats which are cured or treated with respondent's "smoked salt" product will be or are thereby subjected to smoke and that said product when applied to meat accomplishes, does, or can do all or everything that an old smokehouse does or can do. In truth and in fact, when meat is cured and treated with respondent's said product, the same will not be and is not thereby subjected to smoke as such, and said product does not and cannot do all or everything that the old smokehouse can do or does with respect to the curing and smoking of meats.

PAR. 4. The aforesaid representations as so made by respondent have had and have a capacity and tendency to mislead and deceive, and do mislead and deceive, members of the purchasing public into the belief that said representations are true and into the purchase of respondent's said products in reliance upon such erroneous belief, and the same have had the capacity and tendency to divert, and do divert, trade to respondent from competitors who do not misrepresent the efficacy of their products.

CONCLUSION

The aforesaid acts and practices of respondent, Pennsylvania Salt Manufacturing Co., 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 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, as amended by stipulation, the substitute answer of respondent and upon respondent's motion that the case be disposed of on the pleadings, 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 Pennsylvania Salt Manufacturing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its salt products in interstate commerce, do forthwith cease and desist from:

1. Representing that meat cured or treated with "smoked salt" will be or is thereby subjected to smoke, or

2. Representing that "smoked salt" accomplishes, does, or can do all or everything that an old smokehouse does in the curing or smoking of meat.

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

IN THE MATTER OF

H. P. CLEARWATER

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

Docket 3777. Complaint, Apr. 29, 1939—Decision, Oct. 18, 1939

Where an individual engaged in manufacture, and in sale and distribution of certain preparations referred to as "Rheumatic Arthritis Treatment," and consisting originally of two, and later of three, tablets, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of other preparations used in treatment of ailments and conditions for which he recommended his said products, and including many who do not misrepresent their preparations or therapeutic properties thereof; in advertisements which he disseminated through the mails, through insertions in newspapers and periodicals of general circulation, and through circulars, folders, letters, and other printed or written matter, including excerpts or purported excerpts from testimonials, and which were distributed in commerce among the various States and were intended and likely to induce purchase of his said products—

(*a*) Represented that his training, education, and experience had been such as to enable him to determine causes of, and correct treatment of, and cure for, arthritis or rheumatism, and that said ailments were caused by poor physical condition due to faulty habits of eating and living, fatigue, excesses or faulty metabolism, and were principally due to constipation, with its resulting generation and accumulation of poisons absorbed into the blood stream, and with remedy lying in the elimination of current and accumulated poisons and irritants, and through influencing metabolic processes of the body, and that his statements and representations as to causes and method of treatment of said ailments were sound and based upon known and true scientific facts, and reflected consensus of the best and most advanced prevailing professional and scientific thought;

(*b*) Represented that his treatment acted through dissolving and throwing out such poisons through the bowels and kidneys, and through preventing others from entering, and through distributing to the body tissues substances which would increase resistance to circulating poisons, improving condition of the blood and favorably influencing nutritional and metabolic processes, and rendering body normal and relieving pains; and

(*c*) Represented that his treatment was a marvelous achievement which made possible cure for rheumatism and arthritis hitherto regarded as impossible, and constitued an adequate and competent treatment for cure of said ailments and conditions and sciatica and lumbago, which would, in all cases, relieve pain incident thereto;

Facts being his education and experience had not been such as to render him capable of determining causes of rheumatism and arthritis of competent and effective treatments or remedies therefor, no concensus or majority of professional or scientific opinion supported his said statements as to causes, treatments, and cure, and such statements were not based upon

known and true scientific facts, concensus of present-day medical opinion is that conditions in question are not due to circulating poisons as aforesaid, and will not be cured or in all cases relieved by tonic-reconstructive, laxative, carminative, and analgesic actions constituting therapeutically significant effects of his said products, constipation does not in all cases result in generation of poison as aforesaid, no drugs or substances known to medical science will eliminate, etc., irritants assertedly causative, as above, of said condition and as claimed, or accomplish other results set forth, and his said products do not, either singly or in combination, constitute competent and adequate treatment or cure for disease complexes commonly known as arthritis, rheumatism, sciatica, or lumbago, but effect thereof is limited, as above indicated, and to relief from pain equivalent to that afforded by aspirin, and with analgesics not present in sufficient quantity in recommended doses to assure such relief in all cases;

With effect of engendering in minds of substantial portion of purchasing public belief that such statements, representations, and claims were true, and that his treatment possessed properties claimed and would accomplish results indicated, and of causing substantial portion thereof, by reason of such erroneous and mistaken belief, to purchase substantial quantities of said products, and of thereby diverting trade unfairly to him from competitors engaged as hereinbefore set forth, and who truthfully advertise effectiveness and therapeutic value of their respective preparations:

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. P. Clearwater, an individual, hereinafter referred to as respondent, has violated the provisions of the 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, H. P. Clearwater, is an individual having his offices and principal place of business at 145 Walter Street, Hallowell, Maine.

PAR. 2. Respondent is now, and for more than 4 years last past, has been engaged in the business of manufacturing, selling, and distributing certain preparations which together constitute what is referred to by respondent as his "Rheumatic Arthritis Treatment," and are intended for use in the mitigation or treatment of diseases in man. Respondent sells such preparations to members of the purchasing public situated in the various States of the United States

and in the District of Columbia, and causes said preparations, when sold by him, to be transported from his aforesaid place of business in the State of Maine to purchasers thereof located in various States of the United States other than the State of Maine and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between various States of the United States and in the District of Columbia, with other individuals and with firms, corporations, and partnerships selling and distributing preparations and products designed and intended for and used in the treatment, relief, and remedy of the conditions of the human body for which respondent recommends the use of his said preparations. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of his aforesaid business the respondent has disseminated, and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparations by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars, folders, letters, and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning his preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

My association with medicine began early in life * * * a position was offered me in a Pharmacy owned and operated by J. Q. A. Hawes, M. D. * * *. It was really a rare opportunity * * *. Under his careful instruction I gained much valuable information * * *. Following this I had a further helpful experience as Hospital Steward * * *. Later on * * *

I pursued my studies for a time with Dr. A. C. Howland * * *. Much of my time was devoted to reading and studying along this line * * *.

* * * the observer occupying a position of advantage like mine may determine with a substantial degree of accuracy what is best in current professional thought regarding some particular disease condition and its treatment.

In attempting to arrive at a fair consensus of prevailing opinion on Rheumatism-Arthritis I have perhaps enjoyed advantages over the average member of the medical profession * * *.

* * * my treatment is based upon the best and most advanced thought in professional and scientific circles.

* * * in an honest and conscientious effort to place before you * * * these scientific facts about Arthritis and Rheumatism which are well known to be absolutely true.

We become * * * rheumatic because we have permitted our physical condition to be depleted through neglect, faulty habits of living and eating, fatigue, excesses or other indiscretions.

* * * the excess circulating poisons created through faulty metabolism * * *.

But this much is known: Arthritis * * * results mainly from absorption of certain mixed body poisons into the blood stream arising from one or more sources of infection. * * * That it is only when they accumulate in excess and the natural resistive forces of the body have become depleted so that the poisons are not properly eliminated or thrown out of the system that Rheumatism-Arthritis conditions finally result.

* * * those circulating poisons are in your blood and system in excess and that unless you thoroughly eliminate those excess poisons you may sooner or later suffer from an attack * * *.

And so my treatment represents a combination of remedial agents designed to enable the life-blood stream to distribute to the various tissues of the body substances which tend to increase its resistance against these invading circulating poisons.

The whole secret * * * of the beneficial results of my treatment lies in its power to assist Mother Nature * * * to eliminate these poisonous elements as described within the blood and system and to influence nutritional and Metabolic processes of the body, thus tuning up and establishing normal conditions and at the same time relieving the distressing, torturing pains * * *.

Among its several ingredients is one of much importance because it facilitates the elimination of harmful substances as formed by faults of daily metabolism and moreover another * * * acts by one of the best constitutional means known to dissolve and throw out long accumulated irritants which by their presence in different localities of the body induce the aches, pains, and irritations from which the suffering comes. Another ingredient tends further to normalize body metabolism and revitalize all tissues by replenishing existing deficiencies.

And that this process of systematic purification is not accomplished altogether by putting something into the body but by taking the poison and impurities out and preventing others from gaining entrance.

I am free from Rheumatism. * * *

* * * now is a time of marvelous achievements when the seeming impossibilities of yesterday become the demonstrated, proven facts of today * * * grasp this opportunity that is now within your reach!

* * * it was this book and treatment that set me free from this terrible disease and suffering.

and took the medicine 90 days and have been free from Rheumatism for twelve years now.

It is indeed a remarkable remedy * * *.

Your medicine relieved me of Rheumatism when everything else failed.

I had a most severe attack of Lumbago and Sciatica, * * * I am now free.

After months of pain and suffering learns of my treatment—gets blessed relief * * *.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends his treatment, the treatment itself and its effectiveness in the treatment and cure of the said ailments and conditions, respondent directly and by implication among other things has represented: that his training, education and experience have been such as to enable him to determine the causes of, and the correct treatment of and cure for, arthritis and rheumatism; that the causes of arthritis and rheumatism as set forth in his advertising and his method of treatment are sound, are based upon known and true scientific facts and reflect a consensus of the best and most advanced prevailing professional and scientific thought; that arthritis and rheumatism are caused by poor physical condtion due to faulty habits of eating and living, fatigue, excesses, or faulty metabolism and are principally due to constipation; that constipation results in the generation and accumulation of poisons which are absorbed in the blood stream, and cause rheumatism and arthritis; that so long as an excess of these poisons remains in the blood the person is liable to be afflicted with rheumatic or arthritic pains; that the remedy is by the elimination of current and accumulated poisons and irritants from the blood and system and by influencing the metabolic processes of the body; that respondent's treatment acts by dissolving and throwing out these poisons through the bowels and kidneys, preventing other poisons from entering, distributing to the body tissues substances which will increase the resistance of the body to the circulating poisons, improving the condition of the blood, favorably influencing the nutritional and metabolic process rendering the body normal and relieving pains; that respondent's treatment is a marvelous achievement and makes possible the cure for rheumatism and arthritis hitherto regarded as impossible; that it is an adequate and competent treatment for and will cure arthritis, rheumatism, sciatica and lumbago, and will in all cases relieve the pain incident thereto.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the matter above described are grossly exaggerated,

misleading and untrue and constitute false advertising. In truth and in fact respondent's training, education, and experience have not been such as to render him capable of determining the causes of rheumatism and arthritis or devising an adequate or competent treatment or cure therefor. There is no censensus or majority of professional or scientific opinion which supports respondent's statements as to the causes of these ailments or the means by which they should be treated or cured, nor are such statements based upon known and true scientific facts. The consensus of present-day medical opinion is that they are not due to circulating poisons in the blood stream due to constipation, faulty metabolism, or poor physical condition, and will not be cured or in all cases relieved by the purging, tonic, laxative, cathartic, carminative, and analgesic actions which are the therapeutically significant effects of respondent's preparations. Constipation does not in all cases result in the generation of poisons in the digestive tract. There are no drugs or substances known to medical science which will eliminate dissolve or throw out irritants from the blood stream or tissues, or increase resistance to rheumatic disease, or revitalize cell tissues by replenishing existing deficiencies or prevent poisons from entering the system. None of the ingredients of respondent's treatment singly or in combination will render the body normal. Respondent's preparations are not singly or in combination a competent and adequate treatment for, nor will they cure, arthritis, rheumatism, sciatica, or lumbago. Their effect is limited to a laxative, tonic and mildly carminative action and to a relief from pain equivalent to that afforded by aspirin. In the recommended dosage the treatment does not contain analgesics in sufficient quantity to assure relief from pain in all cases.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and claims disseminated as aforesaid with respect to the said preparations, 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 and mistaken belief that such false statements, representations and claims are true; that respondent's preparations possess the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, situated in various States of the United States, because of such erroneous and mistaken beliefs, to purchase substantial quantities of respondent's preparations.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness and use of their said preparations and products as described in paragraph 3 hereof. 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 and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 29, 1939, issued and thereafter served its complaint in this proceeding upon said respondent, H. P. Clearwater, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 6, 1939, the respondent filed his 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 and Richard P. Whiteley, Assistant 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 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, accepted and filed 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, H. P. Clearwater, is an individual having his offices and principal place of business at 145 Water Street, Hallowell, Maine. Respondent is now, and for more than four years last past, has been, engaged in the business of manufacturing, selling, and distributing certain preparations referred to by the respondent as a "Rheumatic Arthritis Treatment," and intended for use in the mitigation or treatment of diseases in man.

In the course and conduct of his business respondent causes, and has caused, said preparations when sold to be transported from his aforesaid place of business in Maine to purchasers thereof located in various States of the United States other than Maine and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Prior to 1938, the said treatment consisted of two tablets. One of these tablets was made according to the following formula:

Sodium Salicylate	5 gr.
Potassium Iodide	1 gr.
Cascarin	½ gr.
Oleoresin Ginger	1/100 gr.
Oil Nutmeg	
Oil of Cinnamin	
Oil of Cloves	

in each pink sugar-coated tablet.

The other tablet was made according to the following formula:

Cascarin	¼ gr.
Resin Podophyllum	⅛ gr.
Powd. Capsicum	1/64 gr.
Powd. Nux Vomica	1/16 gr.
Blaud's Mass	1 gr.
Powd. Gentian	1 gr.

in each white sugar-coated tablet.

During the year 1938, the formula for the first tablet was changed, and thereafter the said tablet was made according to the following formula:

Blaud's Mass	3 gr.
Manganese Dioxide	¼ gr.
Arsenic Trioxide	1/100 gr.
Mercuric Chloride	1/80 gr.
Potassium Iodide	1 gr.
Sulphur Colloidal	⅙ gr.
Calcium Glycerophosphate	½ gr.
Zinc Phosphide	1/16 gr.
Ext. Nux Vomica	1/16 gr.
Cascarin	½ gr.
Oleoresin Ginger	1/100 gr.
Oil Nutmeg	
Oil Cinnamon	
Oil Cloves	

The formula for the white tablet was not changed, but the treatment was enlarged so as to include a third tablet containing 5 grains acetylsalicylic acid, oil of eucalyptus, and inert coloring.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now and has been for more than 4 years last past in substantial competition in commerce among and between the various States of the United States with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of other preparations used in the treatment of the ailments and conditions of the human body for which respondent recommends the use of his said preparations.

Among such competitors in said commerce are many who do not misrepresent their said preparations or the therapeutic properties thereof.

PAR. 4. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing, the dissemination of advertisements concerning his said preparations by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars, folders, letters, and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, advertisements concerning his preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

My association with medicine began early in life * * * a position was offered me in a Pharmacy owned and operated by J. Q. A. Hawes, M. D. * * * . It was really a rare opportunity * * *. Under his careful instruction I gained much valuable information * * *. Following this I had a further helpful experience as Hospital Steward * * *. Later on * * * I pursued my studies for a time with Dr. A. C. Howland * * *. Much of my time was devoted to reading and studying along this line * * *. * * * the observer occupying a position of advantage like mine may determine with a substantial degree of accuracy what is best in current professional thought regarding some particular disease condition and its treatment.

In attempting to arrive at a fair consensus of prevailing opinion on Rheumatism-Arthritis I have perhaps enjoyed advantages over the average member of the medical profession * * *.

* * * my treatment is based upon the best and most advanced thought in professional and scientific circles.

* * * in an honest and conscientious effort to place before you * * * these scientific facts about Arthritis and Rheumatism which are well known to be absolutely true.

We become * * * rheumatic because we have permitted our physical condition to be depleted through neglect, faulty habits of living and eating, fatigue, excesses or other indiscretions.

* * * the excess circulating poisons created through faulty metabolism * * *.

But this much is known: Arthritis * * * results mainly * * * from absorption of certain mixed body poisons into the blood stream arising from one or more sources of infection. * * * That it is only when they accumulate in excess and the natural resistive forces of the body have become depleted so that the poisons are not properly eliminated or thrown out of the systems that Rheumatism-Arthritis conditions finally result.

* * * those circulating poisons are in your blood and system in excess, and that unless you thoroughly eliminate those excess poisons you may sooner or later suffer from an attack * * *.

And so my treatment represents a combination of remedial agents designed to enable the life-blood stream to distribute to the various tissues of the body substances which tend to increase its resistance against these invading circulating poisons.

The whole secret * * * of the beneficial results of my treatment lies in its power to assist Mother Nature * * * to eliminate these poisonous elements as described within the blood and system and to influence nutritional and Metabolic processes of the body, thus tuning up and establishing normal conditions and at the same time relieving the distressing, torturing pains * * *.

Among its several ingredients is one of much importance because it facilitates the elimination of harmful substances as formed by faults of daily metabolism and moreover another—acts by one of the best constitutional means known to dissolve and throw out long accumulated irritants which by their presence in different localities of the body induce the aches, pains, and irritations from which the suffering comes. Another ingredient tends further to normalize body metabolism and revitalize all tissues by replenishing existing deficiencies.

And that this process of systematic purification is not accomplished altogether by putting something into the body but by taking the poison and impurities out and preventing others from gaining entrance.

I am free from rheumatism. * * *

* * * now is a time of marvelous achievements when the seeming impossibilities of yesterday become the demonstrated, proven facts of today—grasp this opportunity that is now within your reach!

* * * it was this book and treatment that set me free from this terrible disease and suffering.

and took the medicine 90 days and have been free from Rheumatism for twelve years now.

It is indeed a remarkable remedy * * *

Your medicine relieved me of Rheumatism when everything else failed.

I had a most severe attack of Lumbago and Sciatica, * * * I am now free.

After months of pain and suffering learns of my treatment * * * gets blessed relief * * *.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondent recommends his treatments, the treatments themselves and their effectiveness in the treatment and cure of the said ailments and conditions, respondent directly and by implication among other things has represented: that his training, education, and experience have been such as to enable him to determine the causes of, and the correct treatment of and cure for, arthritis and rheumatism; that respondent's statements and representations as to the causes of arthritis and rheumatism set forth in his advertising and his method of treatment for arthritis and rheumatism are sound, are based upon known and true scientific facts and reflect a consensus of the best and most advanced prevailing professional and scientific thought; that arthritis and rheumatism are caused by poor physical condition due to faulty habits of eating and living, fatigue, excesses, or faulty metabolism and are principally due to constipation; that constipation results in the generation and accumulation of poisons which are absorbed into the blood stream, and cause rheumatism and arthritis; that so long as an excess of these poisons remains in the blood the person is liable to be afflicted with rheumatic or arthritic pains; that the remedy for arthritis and rheumatism is by the elimination of current and accumulated poisons and irritants from the blood and system and by influencing the metabolic processes of the body; that respondent's treatment acts by dissolving and throwing out these poisons through the bowels and kidneys, preventing other poisons from entering, distributing to the body tissues substances which will increase the resistance of the body to the circulating poisons, improving the condition of the blood, favorably influencing the nutritional and metabolic process, rendering the body normal and relieving pain; that respondent's treatment is a marvelous achievement and makes possible the cure for rheumatism and arthritis hitherto regarded as impossible; that it is an adequate and competent treatment for and will cure arthritis, rheumatism, sciatica, and lumbago, and will in all cases relieve the pain incident thereto.

PAR. 6. The representations made by respondent directly and by implication and used and disseminated by respondent in the manner described with respect to his said treatment are exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact respondent's training, education, and experience have not been such as to render him capable of determining the causes of rheumatism and arthritis or the competent and effective treatments or remedies therefor. There is no consensus or majority of professional or scientific opinion which supports respondent's statements as to the causes of these ailments or the means by which they should be treated or cured, nor are such statements based upon known and true scientific facts. The consensus of present-day medical opinion is that such conditions are not due to circulating poisons in the blood stream due to constipation, faulty metabolism, or poor physical condition, and will not be cured or in all cases relieved by the tonic-reconstructive, laxative, carminative, and analgesic actions which are the therapeutically significant effects of respondent's preparations. Constipation does not in all cases result in the generation of poisons in the digestive tract. There are no drugs or substances known to medical science which will eliminate, dissolve or throw out irritants alleged by the respondent to be causative of rheumatism and arthritis from the blood stream or tissues, revitalize all tissues by replenishing existing deficiencies or prevent poisons from entering the system. None of the ingredients of respondent's treatment singly or in combination will render the body normal. Respondent's preparations are not singly or in combination a competent and adequate treatment for, nor will they cure, the disease complexes commonly known as arthritis, rheumatism, sciatica, or lumbago. Their effect is limited to a laxative, tonic-reconstructive, and mildly carminative action and to a relief from pain equivalent to that afforded by aspirin. In the recommended dosage the treatment does not contain analgesics in sufficient quantity to assure relief from pain in all cases.

PAR. 7. The use by respondent of the foregoing statements, representations, and claims disseminated as aforesaid with respect to the said treatments has had, and now has, the capacity and tendency to and does engender in the minds of a substantial portion of the purchasing public the belief that the said statements, representations, and claims are true; that respondent's treatments possess the properties claimed and will accomplish the results indicated, and has caused and causes a substantial portion of the purchasing public situated in various States of the United States, because of such erroneous and mistaken belief, to purchase substantial quan-

tities of said treatments. As a result, trade has been diverted unfairly to the respondent from his competitors, who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of similar medicinal preparations or other preparations intended for similar usage who truthfully advertise the effectiveness and therapeutic value of their respective preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant 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, H. P. Clearwater, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement, by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of certain medicinal preparations now designated as the respondent's "Rheumatic Arthritis Treatment," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties when sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade

Commission Act, of said medicinal preparations, which advertisements represent, directly or through implication, that:

1. Respondent's training, education, and experience have been such as to enable him to determine the causes of and the correct treatment of and cure for arthritis or rheumatism.

2. Any theories promulgated by the respondent as to the causes of or method of treatment or cure of rheumatism or arthritis are based upon known and true scientific facts, or reflect a concensus or majority of medical opinion, unless and until such is the fact.

3. Respondent's preparations, singly or in combination, constitute a cure or remedy for arthritis, rheumatism, sciatica, or lumbago, or constitute an adequate treatment therefor, or have any therapeutic value in the treatment thereof in excess of providing a laxative, tonic-reconstructive, and mildly carminative action and providing relief from the pain incident to such diseases, conditions, and ailments in some cases.

4. The use of respondent's preparations will render the body normal, revitalize tissues, or prevent poisons from entering the system.

5. Rheumatism or arthritis are caused by circulating poisons in the blood, due to constipation, faulty metabolism, or poor physical condition, or that the use of respondent's preparations will eliminate such poisons.

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

A. LASKEY, J. SAMUELS AND J. P. SHEEHAN, TRADING AS INLAND 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 3846. Complaint, July 13, 1939—Decision, Oct. 18, 1939

Where three partners engaged in sale and distribution of sport jackets, pens, pencils, and other articles of merchandise to purchasers in various other States and in the District of Columbia; in soliciting and in selling and distributing their said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said merchandise to ultimate consumers wholly by lot or chance, and involved distribution by them to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of their products, and circulars explaining their plan of selling their said merchandise, and allotting it as premiums or prizes to operators of said push cards, under plan in accordance with which person selecting by chance, from list of feminine names displayed on card, name corresponding to that concealed under card's master seal received sport jacket or article of merchandise being thus disposed of, and person pushing by chance certain number secured "De Luxe Pen and Pencil," and amount paid was dependent upon number pushed by chance; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid, or similar, sales plan involving various push cards for sale and distribution of products in question by means of game of chance, gift enterprise, or lottery scheme, and varying in detail only from that described, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid and which of articles, if any, purchaser was to receive, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much lower than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with 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 who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them in sale and distribution of their merchandise and by element of chance involved therein, and were thereby induced to buy and sell their products in preference to merchandise offered and sold by competitors aforesaid who do not use same or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce among the various States and in

the District of Columbia to them from their competitors aforesaid who do not use such or equivalent method:

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

Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that A. Laskey, J. Samuels, and J. P. Sheehan, individually, and trading as Inland Sales Corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents A. Laskey, J. Samuels, and J. P. Sheehan are individuals and copartners trading as Inland Sales Corporation, with their principal office and place of business located at 1719 West Division Street, Chicago, Ill. Respondents are now and for some time last past have been engaged in the sale and distribution of sports jackets, pens, pencils, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in Illinois to purchasers thereof, at their respective points of location in the various States of the United States, other than Illinois, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, and in the District of Columbia. In the course and conduct of said business, respondents are, and have been, in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of like or 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 their business, as described in paragraph 1 hereof respondents in soliciting the sale of and in selling and distributing their merchandise furnish, and have 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 35 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed a feminine name. 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legend or instructions as follows:

NAME UNDER SEAL RECEIVES A

BILTMORE

Sport Jacket

Latest Style for
MEN and WOMEN

No. 29 Wins a
DE LUXE Pen and
Pencil Nos. 1 to
29—Pay what you
draw—Nos. over
29 pays 29¢—none
higher

Push it Out With Pencil

Write Your Name Opposite
Name You Select on Reverse Side

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend and instructions. The fact as to whether, a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various push cards accompanied by said order blanks, instructions, and other printed mat-

ter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents, 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 said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise 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, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of 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 and unfair and deceptive acts and practices in

commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 14, 1939, issued and served its complaint in this proceeding upon the respondents, A. Laskey, J. Samuels, and J. P. Sheehan, individuals trading as Inland Sales Corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 22, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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. Respondents, A. Laskey, also known as A. Lasky, J. Samuels, and J. P. Sheehan are individuals and copartners trading as Inland Sales Corporation, with their principal office and place of business located at 1719 West Division Street, Chicago, Ill. Respondents are now and for some time last past have been engaged in the sale and distribution of sport jackets, pens, pencils, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in Illinois to purchasers thereof, at their respective points of location, in the various States of the United States, other than Illinois, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, and in the District of Columbia. In the course and conduct of said business, respondents are, and have been, in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of like or 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 their business, as described in paragraph 1 hereof, respondents in soliciting the sale of and in selling and distributing their merchandise furnish, and have 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 35 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed a feminine name. 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 a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A
BILTMORE
Sport Jacket
Latest Style for
MEN and WOMEN
No. 29 Wins a
DE LUXE Pen and
Pencil Nos. 1 to
29—Pay what you
draw—Nos. over 29
pays 29¢—none higher
Push it Out With Pencil
Write Your Name Opposite
Name You Select on Reverse Side

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for

the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The person to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 respondents, 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 said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise 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, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, A. Laskey, also known as A. Lasky, J. Samuels, and J. P. Sheehan, individuals and copartners trading as Inland Sales Corporation, or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sport jackets, pens, pencils, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, 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, so as to enable such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to their 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 any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise 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 the said respondents, they shall 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

JACK ROSENFELD, DOING BUSINESS AS J. ROSE & COMPANY

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

Docket 3212. Complaint, Aug. 24, 1937—Decision, Oct. 24, 1939

Where an individual engaged in sale of radios, clocks, watches, novelties of various kinds, and candy, to purchasers, chiefly jobbers, in various other States, and in contacting, as thus engaged, customers through use of form letter advising recipient that he specialized in premium merchandise for sales boards and sales cards; in soliciting the sale of and in selling the merchandise and novelties dealt in by him—

Furnished with such merchandise and novelties push cards and punchboards and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of articles in question to members of consuming public wholly by lot or chance, and which involved (1) one hundred and twenty-hole, 4-section punchboards for use under a plan in accordance with which members of public who secured 8 of said numbers received, for nickel paid, pound box of candy, and persons making last punch in each of 4 sections also received such a box, and selectors of the other 108 numbers received nothing, and (2) other types of boards of same general nature, involving operation of games of chance, gift enterprises, or lotteries, and push cards also, in operation of some of which cost to members of public ranged from 1 cent to 15 cents, depending upon concealed number selected by chance by customer, and in operation of which amount of cost to selector, as well as article of merchandise or novelty, if any, secured, were both subject to chance; and

Supplied thereby to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries were conducted as aforesaid, and under which merchandise and novelties thus sold by said individual, and with which such cards and boards and devices were supplied, were distributed to purchasing public wholly by lot or chance, and under which, in some instances, amount which customer was required to pay was similarly thus determined, contrary to established public policy of the United States Government and in violation of the laws of several of the States, and in competition with those who are unwilling to employ in sale and distribution of their products any method or sales plan involving game of chance, gift enterprise, or lottery schemes, and who refrain therefrom;

With result that such competitors were placed at competitive disadvantage and many purchasers of merchandise and novelties dealt in by said individual were attracted by element of chance involved in sale and distribution thereof, as aforesaid, and thereby induced to purchase such products offered and sold by him in preference to similar merchandise and novelties offered by competitors who did not furnish with their products similar cards, boards, or other devices, and with consequence that jobbers purchased substantial amount of merchandise from said individual and trade was unfairly diverted to him from competitors aforesaid:

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

Before *Mr. William C. Reeves* and *Mr. Charles F. Diggs*, trial examiners.

Mr. William L. Pencke, *Mr. P. C. Kolinski*, and *Mr. D. C. Daniel* for the Commission.

Kopitsky & Kessler, 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 Jack Rosenfeld, individually and doing business under the trade name and style of J. Rose & 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 under the trade name and style of J. Rose & Co., with his principal office and place of business located at 2316 Locust Street, St. Louis, Mo. He is now, and for some time last past has been, engaged in the sale and distribution of candy, radios, lamps, clocks, watches, and various items of novelty 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 St. Louis, State of Missouri, to purchasers thereof in the State of Missouri and in other States of the United States 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 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, 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 thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards and punchboards. The methods and practices adopted and used by respondent are substantially as follows:

Respondent has advertised his merchandise, or certain assortments thereof, in newspapers, magazines, and other periodicals of general circulation throughout the United States, and distributes and has distributed to customers and prospective customers, including wholesale dealers and jobbers, retail dealers, and the purchasing public, through the United States mails in interstate commerce, certain literature, instructions, and sales outfits, including various push cards and punchboards, order blanks, advertisements, and catalogues and circulars 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 consuming public and to the operators of said push cards or punchboards. Said push cards and punchboards vary in detail and involve different merchandise and various plans of distribution. One such plan is described in detail for illustration, but other plans used by respondent involve the same principle or method of competition.

One such assortment consists of eight boxes of chocolate candy, together with 150-hole punchboard. The said punchboard is a paper card having 150 partially perforated discs, said discs being divided into three section. Concealed within each disc is a number. The numbers run from 1 to 150 but are not arranged in numerical sequence. Customers punch or separate one of the discs from the card, and when such disc is separated a number is disclosed. Purchasers obtaining numbers from 1 to 15 pay in cents the amount of such number, and purchasers selecting numbers over 15 pay 10 cents for the privilege of selecting one of the discs. Purchasers selecting certain specified numbers receive one of the boxes of candy, and the purchaser of the last disc or punch in each section receives one of the boxes of candy. The numbers under the discs 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 discs, nor do they know whether they will receive anything for the money which they pay, until a selection has been made and the disc

removed from the board. The amount which customers pay is thus determined wholly by lot or chance, and the boxes of candy contained in said assortment are thus distributed to the purchasing public wholly by lot or chance.

The punchboard bears legends informing purchasers and prospective purchasers of the plan or method by which said candy is being sold or distributed. The boxes of candy sold and distributed by said punchboard are each of a greater value than the cost of a single punch from said board. The purchasing public are thus induced and persuaded into purchasing punches from said board in the hope that they may select a prize-winning number and thus obtain a box of candy of a greater value than the amount paid.

As stated above, respondent sells and distributes various assortments of merchandise, and furnishes or sells various devices for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. Respondent, in selling and distributing said merchandise in connection with the sale and distribution of the aforesaid punchboards or 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, and respondent's merchandise is sold or distributed to the consuming public in accordance therewith. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's 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 thereof, 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. Many persons, firms, and corporations who sell or distribute 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 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 respondent's competitors, as hereinabove alleged. Said 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 24, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent, Jack Rosenfeld, individually and doing business under the trade name and style of J. Rose & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and evidence in support of the allegations of said complaint were introduced by William L. Pencke, P. C. Kolinski, and D. C. Daniel, attorneys for the Commission, before William C. Reeves and Charles F. Diggs, examiners for the Commission theretofore duly designated by it, and said testimony was reduced by writing and filed in the office of the Commission, together with numerous pieces of documentary evidence and devices received in evidence as exhibits. No testimony or other evidence was introduced by or on behalf of said respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony taken and evidence received and brief in support of the complaint. No brief was filed by or on behalf of respondent and oral argument was waived by him 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. For about 8 months prior to May 1937, the respondent, Jack Rosenfeld, carried on business at 2316 Locust Street, St. Louis, Mo., under the trade name and style of J. Rose & Co. On May 13, 1937, said respondent, in association with others, caused a corporation to be organized under the laws of the State of Missouri, under the corporate name of J. Rose, Inc., which corporation took over and succeeded to the business theretofore carried on by said respondent under the name and style of Jack Rose & Co. Said respondent, in February 1938, sold all his stock in said corporation, J. Rose, Inc., and since then has had no connection with the business theretofore carried on by said corporation and by him under the trade name and style of J. Rose & Co. While carrying on business under the trade name and style of J. Rose & Co., said respondent was engaged in the business of selling radios, clocks, watches, novelties of various kinds, and candy. Said respondent caused some of the articles of merchandise and novelties, sold by him, to be transported when sold, from his place of business in St. Louis, Mo., through and into other States of the United States to the respective purchasers thereof, and in the course and conduct of his said business said respondent has been and was then in active competition with various partnerships and corporations and other persons also engaged in the sale of similar articles of merchandise and novelties in commerce among several of the States of the United States.

PAR. 2. The greater portion of the merchandise sold by respondent, as set out in paragraph 1 hereof, was sold to jobbers; respondent made no sales direct to the consumer. Respondent made use of a form letter in contacting customers, in which letter the statement was made that respondent specialized in premium merchandise for sales boards and sales cards. Respondent, in soliciting the sale of, and in selling, the merchandise and novelties dealt in by him, furnished with such merchandise and novelties various devices sometimes described as push cards and punchboards and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes, by means of which, articles of such merchandise and novelties were to be distributed to members of the consuming public wholly by lot or chance. One type of the devices so furnished by respondent, contained 120 holes, divided into four sections. In each hole was secreted a rolled slip of paper upon which a number was printed. Members of the public were to be solicited to punch one or more of the numbers from the board and to pay 5 cents for each number so obtained. Selectors of eight

of the numbers received, for each of such numbers, a 1 pound box of candy and the person making the last punch in each of the four sections also received a 1 pound box of candy, but selectors of the other numbers secreted in the board, 108 in all, received nothing. Other types of boards, but boards of the same general nature, the use of which involved the operation of games of chance, gift enterprises, or lotteries and devices known as push cards also were furnished by respondent with various articles of merchandise and novelties sold by him. In the operation of some of these devices the cost to members of the public ran from 1 cent to 15 cents, depending upon the number concealed by the disk selected by the customers and in the operation of said devices of this nature both the amount of the cost to the selector and whether the customer would obtain any article of merchandise or novelty was always a matter of chance. The respondent, while engaged in business as set out in paragraph 1 hereof, sold a substantial quantity of merchandise and novelties with which he furnished such devices, and the Commission finds that the merchandise and novelties so sold by the respondent were distributed to the purchasing public wholly by lot or chance, and that by the use of one type of such device so furnished by respondent the amount which each customer was required to pay also was determined wholly by lot or chance.

PAR. 3. The Commission finds that the merchandise and novelties sold by respondents to jobbers, with which he furnished push cards or punchboards, or both, as set out in paragraph 2 hereof, was resold by such jobbers to retail dealers who resold such articles of merchandise or novelties to the purchasing public by the use of one or the other of such devices in the manner and by the sales plan described in said paragraph 2. The Commission further finds that respondent, by furnishing such cards and boards, or either type of said devices, with the merchandise and novelties sold by him, thereby supplied to, and placed in the hands of others, the means by which games of chance, gift enterprises, and lotteries have been conducted. The Commission further finds that the use of such cards and boards in the resale and distribution of the merchandise and novelties sold by respondent to jobbers involved a game of chance, or the sale of a chance, and that the use of such methods in the sale and distribution of such merchandise and novelties was a practice of the sort which is contrary to the established public policy of the Government of the United States and is in violation of the laws of several of the States of the United States.

PAR. 4. There were among the competitors of respondent, persons, partnerships, and corporations engaged in the sale of articles of

merchandise and novelties of the same general nature as those sold by respondent, and in commerce between and among the various States of the United States, which competitors were unwilling to employ in the sale and distribution of merchandise and novelties dealt in by them any method or sales plan which involved games of chance, gift enterprises, or lottery schemes, and refrained from such practice, and as a result were placed at a disadvantage in competition. Many purchasers of merchandise and novelties dealt in by respondent were attracted by the element of chance involved in the sale and distribution of such merchandise and novelties by the use of push cards or punchboards furnished by respondent, and were thereby induced to purchase the merchandise and novelties offered for sale by respondent in preference to similar merchandise and novelties offered for sale by competitors of respondent who did not furnish with merchandise and novelties sold by them similar push cards or punchboards or other devices and as a result jobbers purchased a substantial amount of merchandise from respondent with the result that trade was diverted unfairly to respondent from said competitors.

CONCLUSION

The acts and practices of respondent, as herein found, are all to the injury and prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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, testimony, and other evidence taken before William C. Reeves and Charles F. Diggs, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no testimony or other evidence in opposition to the allegations of said complaint), brief of counsel for the Commission filed herein (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Jack Rosenfeld, individually and doing business under the trade name and style of J. Rose & Co., or trading under any other name or names, his representatives,

agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise, in commerce as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy 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 others, packages or assortments of candy or other merchandise, together with punchboards, push or pull cars or any other lottery device, which punchboard, push or pull card or other lottery device is to be used or may be used in selling or distributing said candy or other merchandise to the public.

3. Supplying to or placing in the hands of others, any lottery device either with assortments of candy or other merchandise, or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall withing 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

ROY HEMPHILL, DOING BUSINESS AS DIESEL POWER-UNITED ENGINEERING SCHOOLS, DIESEL POWER-UNITED ENGINEERING SCHOOLS, INC., AND DIESEL POWER-UNITED ENGINEERING SCHOOLS

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

Docket 3318. Complaint, Jan. 31, 1938—Decision, Oct. 24, 1939

Where an individual and two corporations, of which said individual was president, engaged, under identical or substantially identical trade and corporate names, in conducting, from four cities in different sections of the United States, identical or practically identical correspondence courses of study and instruction in Diesel engines, air conditioning and refrigeration, and other trade subjects, and operating under an interchange arrangement between them whereby a student who had been enrolled by any one of them could pursue his courses in any of the schools which they operated, and their advertising redounded to benefit of all, and in substantial competition, as aforesaid, with others engaged in sale and distribution of similar courses of study and instruction in Diesel training, air conditioning, and refrigeration and other trade subjects, and also in courses of study and instruction to prepare students for various positions, employments, trades, callings, and professions; in advertising their said courses to the consuming public in various forms of printed matter, by radio broadcasts and otherwise—

(*a*) Represented, through use of word "engineering" in trade and corporate names employed by them as aforesaid, and in their advertising matter and through statements and implications of their advertising emphasizing thoroughness of their training and high standing and selection of their personnel or instructors, etc., that their courses were of such a character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering offered by technical schools which had courses in engineering science and awarded degrees therein after completion of prescribed courses;

Facts being their schools were trade schools with educational entrance requirement of less than eighth grade, courses of instruction were short and not exhaustive of the subject, nor of character and extent to give student basic and general training in engineering science comparable to courses in engineering offered by technical schools offering such courses as aforesaid and awarding degrees, but training was calculated only to prepare students for work as mechanics or work of similar grade, and were not of such a character to warrant the awarding of degrees such as awarded by schools giving recognized instruction in engineering science, and they did not and were not authorized to award such engineering degrees, and, with the exception of two members of the faculty at one of said schools, none at any of the various schools had engineering degree awarded by technical school authorized by law to award degree in engineering science;

(*b*) Represented, as aforesaid, that their schools occupied a dominant position in the fields of Diesel power, air conditioning, and refrigeration training, and had largest system of training in the United States in such subjects, and had completely equipped shops for training students as engineers in subjects aforesaid, through such statements, among others, as "recognized as America's great system of training in these fields" and "It is self-evident that such leadership could only come as a result of having the equipment and laboratories and giving this type of instruction that gets results," etc., and "Here, also, for the student's complete instruction is a vast assortment of engines and equipment; exactly what you would expect to find in a school that occupies such a dominant position in this field";

Facts being they were not the largest, greatest, or best schools of their kind in the United States, their equipment was not vast in extent, but in fact limited, and they did not occupy a dominant position in their field of training in the United States; and

(*c*) Represented that there was a great and unusual demand in the Diesel power, air conditioning and refrigeration industries for graduates of their schools, and that they operated an employment service for such graduates and procured positions therefor in industries involved and procured gainful employment for their students, enabling them to earn while taking their courses, through such statements, among others, as "* * * fields offer splendid opportunities * * *," "* * * free employment service for our graduates * * * considered just as much our business as teaching you your trade * * * Undreamed of opportunities are suddenly opened to men trained in the new, fast growing 'Comfort Industry' * * *," and "* * * You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men * * *," and "Start your training now. If you have the ambition, * * * we will help you to succeed * * *";

Facts being they had no limited reservation list of men for training, but solicited and accepted as many as were available and could be signed up, had no regular employment offer, and made no effort to secure students a job upon completion of course, and did not place students in positions enabling them to earn while pursuing their courses, and there was no unusual demand for employers for students of correspondence schools with type of training which they offered, and such training did not qualify such students for "big paying positions with a wonderful future" or to secure employment in the "big pay" field as consulting engineers in air conditioning and other subjects involved;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all of said representations were true, and with result, as direct consequence of such belief induced by their said advertising and representations, of causing prospective student public to purchase substantial volume of their said courses and of thereby diverting trade unfairly from those engaged in sale of like and similar correspondence courses and who truthfully advertise and represent the same; to the substantial injury of competition in commerce:

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

Before *Mr. William C. Reeves* and *Mr. Charles P. Vicini*, trial examiners.

Mr. Harry D. Michael, *Mr. Reuben J. Martin* and *Mr. William L. Pencke* for the Commission.

Mr. Frank J. O'Brien, of San Francisco, Calif., for Roy Hemphill.

Mr. Louis Sachs, of Minneapolis, Minn., for Diesel Power-United Engineering Schools, Inc. and Diesel Power-United Engineering Schools.

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 Roy Hemphill, doing business under the name and style of Diesel Power-United Engineering Schools, Diesel Power-United Engineering Schools, Inc., a corporation organized under the laws of the State of Minnesota, and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, all 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, Roy Hemphill, is an individual doing business under the name and style of Diesel Power-United Engineering Schools, with his office and principal place of business in the conduct thereof at 200 Hayes Street, San Francisco, Calif. Respondent, Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business at 5 North Fifteenth Street, Minneapolis, Minn. Respondent, Diesel Power-United Engineering Schools, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 McGee Street, Kansas City, Mo. The said Roy Hemphill is president and the directing head of each of the two corporations above named, but maintains his general headquarters at the San Francisco office previously mentioned.

PAR. 2. Respondent, Roy Hemphill, doing business under the name and style of Diesel Power-United Engineering Schools, respondent, Diesel Power-United Engineering Schools, Inc., a corporation, organized under the laws of the State of Minnesota, and respondent,

Diesel Power-United Engineering Schools, a corporation, organized under the laws of the State of Missouri, are now and have been for more than 1 year last past engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in Diesel engines, air-conditioning and refrigeration and other trade subjects, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Each of said respondent schools, in the course and conduct of said business during the time aforesaid, caused and does now cause its respective courses of study and instruction to be transported from its respective place of business in the State where it is located to, into and through States of the United States other than such State of location, to the various purchasers thereof in such other States.

The courses and training offered by the three respondent schools herein are identical or practically so. The material used by each is furnished by the respondent, Roy Hemphill, the said corporate respondents purchasing the same from him, or from Diesel Power-United Engineering Schools at San Francisco, which said Roy Hemphill operates individually under said trade name as aforesaid. The advertising matter, sales policies and general conduct of the business of the three schools are identical or practically so, and the acts and practices hereinafter set forth are applicable to each as being part of a general policy set in motion and directed by the said Roy Hemphill.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States in the United States and in the District of Columbia of courses of study and instruction in Diesel training, air-conditioning, refrigeration, and other trade subjects, and also of courses of study and instruction intended for preparing students thereof for various positions, employments, trades, callings, and professions, all of which are pursued by correspondence. Said respondent schools have been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States, in the sale of their said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 4. The use by said respondent schools of the word "Engineering" in their respective names as aforesaid, and also as a descriptive term in their advertising matter, is misleading in that it imports and implies that the courses offered by said schools are of such character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering

offered by technical schools offering courses in engineering science and awarding degrees in such science after completion of the prescribed courses therein. The courses offered by respondent schools are not of this character, but, on the other hand, are, in comparison therewith, short and not exhaustive of the subject matter connected therewith. Moreover, said respondent schools neither offer nor award any engineering degrees such as those awarded by schools giving recognized instruction in engineering science, nor are they authorized by law to do so, nor are their courses of such a character to warrant the awarding of such degrees. Said schools are in fact merely trade schools and the training offered is calculated only to fit students thereof for work as mechanics or work of similar grade.

PAR. 5. Said schools in the solicitation of students to enroll in their said courses, have made many misleading representations to the effect that they have jobs to offer instead of being engaged merely in the business of giving instruction as previously mentioned. Such representations have been made by one or more of said schools in one or more of the methods hereinafter set forth. One such representation has been made by the use of advertisements inserted under the heading "Help Wanted," or similar headings, or by the use of so-called "blind" advertisements which do not give the name of the advertiser or clearly indicate the nature of the business in which the advertiser is engaged, but gives only a box number in care of the paper in which the advertisement appears, and also by use of obscure wording of the advertisements by means of which an offer of employment is implied. An example of an advertisement so used by one of said schools is the following:

Young men between the ages of 18 and 27 now being selected from this district to qualify for All-Metal Aircraft industries. To those selected will be given free transportation, including short, inexpensive training under factory methods. For interview write Box 59444, Bee.

Other statements and phrases used having similar import or effect are the following:

Jobs Waiting for Men.
Prepare Yourself for Diesel or Air Conditioning-Refrigeration Jobs.
"* * * and the jobs are waiting."
Men Wanted to Train for Jobs * * *

That a job is offered the prospective student at the completion of his training is further implied from the information requested on a questionnaire used by respondents in enrolling students, much of which has no special bearing upon the applicants' qualifications to take the courses offered. Information requested carrying such implications is that requesting, "Phone No.," "Married or Single,"

"Race," "Nationality," "Do you like Sales Work?," "Speak any foreign language," "References," "Bank References or Connections," etc.

In truth and in fact, respondents merely have instruction courses for sale and have no regular full-time work to offer to prospective students or to students who complete their courses. All they have to offer in the line of employment is a limited number of part time jobs to resident students and assistance to its students in trying to locate jobs elsewhere.

PAR. 6. Respondents, by use of advertisements such as the one first quoted in the preceding paragraph and by other representations of like effect in advertisements or by salesmen, represent that their offers to enroll students for training are limited to certain ages, or to limited numbers from a community, or to persons having special qualifications, or that they are otherwise limited. Examples of statements in advertisements and representations to such effect are the following:

100 young men wanted at once to train for aircraft jobs as mechanics and sheet-metal fabricators.

Reservations Being Accepted Now * * *

A limited number of men now employed will be selected to train for jobs in these fields.

Respondents further the implications created by the above statements through the use of the "Questionnaire" referred to in paragraph 5, in which detailed information as to education, experience, employment, references, etc., is requested and secured.

In truth and in fact, no special selection of students is made by respondents, Solicitations and acceptances of students are limited, generally speaking, only by the number of prospects available.

PAR. 7. Respondents in advertising their courses of instruction to prospective students make many exaggerated and misleading statements and representations in regard to their schools to the effect that they are the largest and greatest in the United States, that they are national in scope, that they are the best equipped for instruction in the subjects given and that such equipment is enormous in volume. Among such statements and representations are the following:

The largest system of Diesel and Air Conditioning-Refrigeration training in U. S.

Our national chain of schools are equipped to give practical and thorough training in the most completely equipped shops.

We operate the greatest system of Diesel and Air Conditioning-Refrigeration Training in America.

* * * a vast assortment of engines and equipment; exactly what you would expect in a school that occupies such a dominant position in this field.

* * * world's largest Diesel, Air Conditioning and Refrigeration School * * *

In truth and in fact, the representations referred to are misleading in that they are greatly exaggerated or not accurate statements of the facts involved. Respondents' schools cannot accurately or truthfully be represented as being the largest, greatest or best of their kind in the United States or national in scope, nor can their equipment be accurately described as "vast" in extent, nor can it be accurately stated that they are the "most completely equipped."

PAR. 8. Respondents in advertising their courses of instruction to prospective students make various misleading representations to the effect that they maintain a Nation-wide employment service and which convey the implication that their representatives are located throughout the United States and actively engaged in seeking out employment opportunities for their students. Among such representations are the following:

Our national employment service is maintained for our graduates * * *
A free national lifetime employment service is maintained for our graduates.

Such representations are misleading in that they greatly exaggerate the facts. Employment services are maintained by respondents only at the places where their schools are located, as herein set forth, with the addition of one or two other places where branch schools are or have been, maintained. Such service may not accurately be stated as being national in scope.

PAR. 9. Respondents in advertising their courses of instruction to prospective students make many exaggerated and misleading representations in regard to earnings, character of jobs and future possibilities for its students as a result of taking their courses to the effect that the demand for men in the lines of work for which respondents offer training is much greater than it is in fact and that students who complete their courses are equipped to and may expect positions in the high salaried class. Among such representations are the following:

"Undreamed of Opportunities."
Prepare yourself for a Big-Money Job.
You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men.
Big Pay Diesel Jobs for Trained Men!
Earn Big Money! Diesel Needs Trained Men Now * * * A short course, under expert instructors, in world's largest Diesel, Air Conditioning, and Refrigeration School, will qualify you for a big paying position with a wonderful future. * * *

In truth and in fact, there are no unusual demands for men with training such as that offered by respondents in the fields for which such training is offered. Such demands that do exist in such fields are

in great part met by employers by placing men already in their employ in the openings that arise and training them in the work involved. Such opportunities as there are for men who take respondents' training or training of similar type and grade are in the field of mechanics, operating engineers, or trades where the pay involved is not in the so-called "big pay" field and is comparable to that of mechanics, minor operating engineers, mechanical trades, and the like.

PAR. 10. The use by respondents of the foregoing statements and representations, and others similar thereto, in offering for sale and selling their courses of study and instruction, as herein set out, has had, and now has, the tendency and capacity to, and does, in fact mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4, 5, 6, 7, 8, and 9 hereof are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby, trade is unfairly diverted to respondents from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for various trades, positions, professions, and callings, including courses of the same general kind as those offered by respondents.

There are among the competitors of respondents those who, in the sale of their respective courses of study and instruction, do not similarly or in any manner, misrepresent their courses of study and instruction or matters pertaining thereto. As a result of respondents' said practices as herein set forth ,substantial injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 11. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respondents, 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 the Federal Trade Commission Act, the Federal Trade Commission on January 31, 1938, issued and served its complaint in this proceeding on the respondents, Roy Hemphill doing business under the name and style of Diesel Power-United Engineering Schools; Diesel Power-United Engineering Schools, Inc.,

a corporation organized under the laws of the State of Minnesota; and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents each filed an answer to the complaint. Thereafter testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael and Reuben J. Martin, attorneys for the Commission, before William C. Reeves and Charles P. Vicini, trial examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Louis Sachs, attorney for Diesel Power-United Engineering Schools, Inc., a Minnesota corporation, and Diesel Power-United Engineering Schools, Inc., a Missouri corporation and Frank J. O'Brien, attorney for respondent Roy Hemphill, 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 complaint, the answers thereto, the testimony and other evidence, brief in support of the complaint and the brief on behalf of respondents Diesel Power-United Engineering Schools, Inc., a Minnesota Corporation, and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri in opposition thereto, no brief having been filed upon the part of respondent Roy Hemphill, and respondents not having requested oral argument; 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. Roy Hemphill is an individual doing business under the name and style of Diesel Power-United Engineering Schools, with office and principal place of business located at 200 Van Ness Avenue, San Francisco, Calif.

Respondent Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and place of business located at 5 North 15th Street, Minneapolis, Minn. It also operates a branch school located at 1124 Carnegie Avenue, Cleveland, Ohio.

Respondent Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Missouri, and with its principal place of business located at 1520 McGee Street, Kansas City, Mo.

The complaint issued January 31, 1938, charged, among other practices, that the use by the various respondents of trade or corporate names containing as a part thereof the word "engineering" constituted unfair methods of competition. Subsequent to the issuance of complaint, the individual respondent changed the trade name under which he was conducting business so as to eliminate therefrom the word "engineering." Likewise, the corporate respondents changed their respective corporate names so as to eliminate therefrom the word "engineering."

Roy Hemphill was president of both corporations until January 1938, being succeeded at that time by Walter W. Kerschner. Walter W. Kerschner was vice president of both corporations until January 1938 and had been employed by respondent Hemphill at San Francisco and Minneapolis prior to the incorporation of the Minneapolis respondent in September 1936.

Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in Diesel engines, air conditioning, and refrigeration, and other trade subjects which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. The courses of training offered by respondents were identical or practically so, and said material for the respondent corporations was furnished by respondent Roy Hemphill. This is being gradually superseded by material supplied by Rosencraft of Newark, N. J., since January 1, 1938. There was also an interchange arrangement between the respondents whereby a student who had been enrolled by any respondent could pursue his course of instruction in any of the schools operated by the respondents and the advertising redounded to the benefit of all the respondents.

PAR. 2. Respondent Roy Hemphill, upon receiving contracts from students outside the State of California, ships from his place of business in San Francisco, Calif., through the mails, correspondence lessons to students located in the respective States where they live other than the State of California.

Respondent corporations, upon receipt of contracts, ship their instruction material from the principal place of business of the Minnesota corporation in Minneapolis, Minn., and of the Missouri corporation in Kansas City, Mo., to students located in North Dakota, South Dakota, Wisconsin, Iowa, and other States of the United States.

PAR. 3. Respondents are now, and for more than one year last past have been, engaged in substantial competition with other individuals, firms and corporations engaged in the sale and distribution of similar courses of study and instruction in Diesel training, air conditioning, refrigeration, and other trade subjects, and also of courses of study and instruction intended for preparing, students thereof for various positions, employments, trades, callings, and professions in commerce between and among the various States of the United States.

PAR. 4. Respondents in the soliciting and sale of, and in selling their said correspondence courses, and for the purpose of creating a demand therefor, now cause, and for more than one year last past have caused, advertisements to be issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts and other ways.

PAR. 5. Respondents make, and have made, to the prospective students, statements with reference to the alleged value and merits of their correspondence courses, their employment service, opportunities for employment of their graduates, and types of positions for which they prepare; some of which statements so made and circulated by the respondents being as follows:

Speed Your Way to Success By Qualifying For A Position in Diesel Engineering, Air Conditioning, Refrigeration * * * Trained Men are Needed * * * With specialized training in Diesel Engineering or Air Conditioning and Refrigeration you should be able to start your career, logically, in an industry that needs trained men Now * * * Prepare yourself for a big money job * * * Free Employment Service. We maintain a free employment service exclusively for our graduates. This service is considered just as much our business as teaching you your trade * * * Undreamed of opportunities are suddenly opened to men trained in the new, fast growing "Comfort Industry." "Positions you can hold in Air Conditioning, Refrigeration" * * * Consultant engineers in air conditioning. Consulting engineers in refrigeration * * * Engineers (chief) of air conditioning plants (Industrial and Commercial) * * * It will pay you to say "I have trained at Diesel Power-United Engineering Schools" * * * A short time spent with Diesel Power-United Engineering Schools is all that is necessary to prepare you for the many opportunities offered in Diesel Engineering Air Conditioning, and Refrigeration fields. Employers want thorough practical, trained men. That is the type of training you are assured of through the Diesel Power-United Engineering Schools system, which devotes its entire resources and facilities to approved methods of training and qualifying men for positions in this great industry. The difference in schools is largely one of the knowledge, background and experience of its staff. Years of successful trade school operation and experience enables the Diesel Power-United Engineering Schools to offer a most complete and approved system of training. Train in Our Well Equipped Shops. The Diesel Power-United Engineering Schools are recognized as America's great system of training in these fields. It is self-evident that such leadership could only come as a result of having

the equipment and laboratories and giving this type of instruction that gets results and prepares a student in a truly efficient way. Here, also, for the student's complete instruction is a vast assortment of engines and equipment; exactly what you would expect to find in a school that occupies such a dominant position in this field. Every instructor has been most carefully selected after rigorous investigation of his qualifications. A wide background of technical training and practical experience is demanded; also a type of mind that is able most effectively to pass on that experience and knowledge to the student * * *

Diesel Power-United Schools, Inc., "America's Great System of Diesel Engineering and Air Conditioning—Refrigeration Training," 5 North 15th Street (At Hennepin Avenue), Minneapolis, Minnesota.

San Francisco, California Cleveland, Ohio
Kansas City, Missouri Minneapolis, Minnesota

DIESEL POWER Diesel and air conditioning—refrigeration fields offer splendid opportunities. Rating certificates issued upon graduation from our schools are recognized by national manufacturers and distributors. The largest system of Diesel and air conditioning—refrigeration training in U. S. Write or call for information.

United Schools, 5 North 15th Street, Minneapolis
Kansas City San Francisco Cleveland

America's great system of Diesel training, Diesel Power-United Engineering Schools * * * What we have done for others we can do for you. Start your training now. If you have the ambition, determination, and confidence we will help you to succeed in Diesel work. You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men. The trained man gets the best jobs, shorter hours, easier work, and better pay, as well as greater opportunities for advancement. * * * Students receive a life scholarship upon completion of our course of study and have the privilege of consulting our engineering staff at all times without extra cost.

PAR. 6. Respondents' schools are not the largest, greatest, or best schools of their kind in the United States, nor is their equipment vast in extent, but in fact, limited. Respondents do not occupy a dominant position in their field of training in the United States. The use by the respondents of the word "engineering" in their respective corporate and firm names and also as a descriptive term in their advertising matter is misleading in that it imports and implies that the courses offered by respondents are of such a character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering offered by technical schools offering courses in engineering science and awarding degrees in such science after completion of the prescribed courses therein. The schools are trade schools with an educational entrance requirement of less than the eighth grade, and the training offered is calculated only to prepare students thereof for work as mechanics,

or work of similar grade. The courses of instruction are short, not exhaustive of the subject, and not of the character and extent to give the student a basic and general training in engineering science comparable to courses in engineering offered by technical schools having courses in engineering science and awarding degrees in such science after the completion of the prescribed courses therein. Respondent schools neither award any engineering degrees such as are awarded by schools giving recognized instruction in engineering science nor are they authorized by law to do so, nor are their courses of instruction of such character as to warrant the awarding of such degrees. At the San Francisco school of respondent Roy Hemphill, there are only two members of the faculty with the degree of B. S. No other members of the faculty of respondent Hemphill's school, and no member of the faculty at the respondents' Minneapolis, Kansas City, or Cleveland schools has an engineering degree awarded by a technical school authorized by law to award degrees in engineering science.

PAR. 7. Respondents have not had any limited reservation list of men for training, but they solicit and accept as many men as are available and can be signed up. They have no employment office, nor do they make any regular practice or effort to secure students a job upon completion of the course. Respondents do not place students in positions enabling them to earn while pursuing their courses of study. There is, and has been, no unusual demand by employers for students of correspondence schools with the type of training offered by respondents, nor does such training qualify such students for "big paying positions with a wonderful future," to secure employment in the "big pay" field, as Consulting Engineers in air conditioning, Consulting Engineers in refrigeration, Engineers (Chief) of air conditioning plants (industrial and commercial) or other higher technical jobs.

PAR. 8. The testimony on behalf of the respondents indicates that subsequent to the issuance of complaint herein, the several respondents revised various items of their respective advertising literature for the purpose of removing from such advertising literature representations which the Commission charged constituted unfair methods of competition.

PAR. 9. Each and all of the false and misleading statements and representations made by respondents, as aforesaid, by means of advertisements, radio broadcasts, and in other ways, in offering for sale and selling their correspondence courses of instruction, were, and are, calculated to, and have had, and now have, the tendency and capacity to mislead and deceive, and do mislead and deceive a

substantial portion of the purchasing public into the belief that all of the said representations are true.

PAR. 10. Respondents, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, cause the prospective student public to purchase a substantial volume of said correspondence courses, with the result that trade has been unfairly diverted from individuals, firms and corporations engaged in the sale of like and similar correspondence courses of study who truthfully advertise and represent their said correspondence courses. As a result thereof substantial injury is done, and has been done, by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents as set forth in the foregoing findings as to the facts are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce in violation 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 respective respondents, testimony and other evidence taken before William C. Reeves, and Charles P. Vicini, 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 William L. Pencke, counsel for the Commission and by Louis Sachs, counsel for the two respondent corporations, (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 the Federal Trade Commission Act.

It is ordered, That respondent Roy Hemphill, individually and doing business as Diesel Power-United Engineering Schools, or under any other name or names, his representatives, agents, and employees; and respondents Diesel Power-United Engineering Schools, Inc., a corporation organized under the laws of the State of Minnesota and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of courses of instruction in Diesel engines, air conditioning and refrigeration and other trade subjects in commerce, as

commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the word "engineering" or any other word or words of similar import or meaning in respondents' trade or corporate names, or in any other manner, that respondents' courses of instruction qualify students as engineers in Diesel power, air conditioning, refrigeration or any other branch of the engineering profession.

2. Representing in any manner that respondents' schools or any of them, occupy a dominant position in the fields of Diesel power, air conditioning or refrigeration training, or have the largest system of training in the United States in Diesel power, air conditioning or refrigeration, or that respondents' schools have completely equipped shops for training students as engineers in Diesel power, refrigeration or air conditioning.

3. Representing in any manner that respondents' courses of instruction qualify a student for any position requiring a degree of skill or technical knowledge greater than that required of a mechanic.

4. Representing in any manner that there is a great or unusual demand in the Diesel power, air conditioning or refrigeration industries for graduates of respondents' schools or for persons having no greater degree of technical training than that afforded by respondents' courses of instruction.

5. Representing that respondents operate an employment service for the graduates from respondent's schools or that respondents procure positions for such graduates in the Diesel power, air conditioning or refrigeration industries unless and until such are the facts.

6. Representing that respondents procure gainful employment for students enabling them to earn while taking respondents' courses of instruction unless and until such is 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 this order.

IN THE MATTER OF

ARTHUR LONGFIELD

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

Docket 3823. Complaint, June 16, 1939—Decision, Oct. 24, 1939

Where Worcestershire Sauce under name "Lea & Perrins Worcestershire Sauce" had long been made in accordance with private and secret formula and been extensively advertised in England and other parts of the world, and had come to be highly popular and, as imported or made and sold in the United States in bottles and with labels or wrappers of distinctive size and shape, to have Nation-wide popularity as product of recognized and uniform excellence, and to be identified by purchasing public principally by aforesaid highly distinctive containers and labels or wrappers; and thereafter an individual engaged in manufacture, sale and distribution of "Longfield's Celebrated Worcestershire Style Sauce," in competition with makers and sellers in the United States of said genuine "Lea & Perrins Worcestershire Sauce," made under the original, private, and secret recipe, and under sanction and control of English parent company—

(*a*) Packaged his aforesaid "Worcestershire Style Sauce" in containers closely resembling those of "Lea & Perrins Worcestershire Sauce" with bottles of same distinctive size and shape and wrappers of same type and color and with typography, border, dividing lines, color scheme, and other distinctive features and printed matter, which simulated label and package of Lea & Perrins product aforesaid; and

(*b*) Included and copied from label of latter, legend "From the recipe of a nobleman in the county," and enclosed same in scrolls which simulated those used on label of other and, in furtherance of such attempted simulation, used in center of his wrapper or label shield which closely resembled in appearance that used on Lea & Perrins label aforesaid;

Notwithstanding fact recipe for said individual's product was not furnished by nobleman in Worcestershire, England, and said product was not, as thus implied, made under secret recipe used by Lea & Perrins:

With tendency and capacity to induce members of public to form mistaken and erroneous belief that his said "Worcestershire Style Sauce" was in fact Worcestershire Sauce made and sold by Lea & Perrins, and with result, as consequence of such belief, induced by said acts and representations, that substantial numbers of purchasing public bought his said product, and trade was thereby unfairly diverted to him from his competitor aforesaid:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Karl Stecher for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Arthur Longfield, an individual, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Arthur Longfield, is an individual, with his principal place of business and office at 552 Myrtle Avenue, Brooklyn, N. Y. He is now, and has been for several years heretofore, engaged in the sale and distribution of a table sauce under the brand or label of "Longfield's Celebrated Worcestershire Style Sauce." This brand or label is attached to each bottle of said sauce. This sauce is for use in seasoning meats, fish, oysters, and other food when served for use. The sauce is put up in 5-ounce bottles and is sold at about 90 cents per dozen to retail dealers.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported, said product when sold from the city of Brooklyn in the State of New York to the purchasers thereof located in various States other than the State of New York. There is now, and has been during all of the times herein mentioned, a course of trade in said product so sold by respondent in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of said business, respondent is now, and has been at all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, in commerce between and among the various States of the United States, products intended to be used for the same purposes as the product sold by respondent.

PAR. 3. Worcestershire sauce was originally made in the County of Worcestershire in England. In about the year 1835 John Wheeley Lea and William Perrins, chemists, commenced the manufacture and sale of this sauce from a private recipe which they, according to the tradition in the Lea and Perrins families, had acquired from an English nobleman, Sir Marcus Sandys, who had brought said recipe, or one similar thereto, from India, where similar, though more pungent, sauces were in vogue. To this article of commerce, new in England, Messrs. Lea & Perrins gave the name "Worcestershire Sauce." It was extensively advertised in England and most other parts of the world and became very popular. In about the year 1840 the sauce

was first imported into the United States. It was imported in bottles wrapped and labeled ready for sale until 1877. From 1877 to 1898, it was brought over from England in casks, partly finished. Upon arrival in this country the manufacture of the sauce was completed according to the private formula of Messrs. Lea & Perrins above referred to. The bottling and labeling were then done in this country. From 1898 to 1911 the sauce was manufactured in the United States for Lea & Perrins by John Duncan's Sons under the original formula. From 1911 to 1930 the English firm of Lea & Perrins themselves conducted the manufacture of Lea & Perrins Sauce in New York City. Prior to June 1, 1930, there was organized a New York corporation known as Lea & Perrins, Inc., which was and is owned and controlled by the English corporation known as Lea & Perrins, Ltd. Lea & Perrins, Ltd., acquired the entire world-wide business of the English partnership of Lea & Perrins, manufacturers of Lea & Perrins Worcestershire Sauce. Since June 2, 1930, Lea & Perrins, Inc., has manufactured and sold Lea & Perrins Sauce, made under the original private and secret recipe, throughout the United States. The business of this corporation in the sale of Worcestershire Sauce in the United States amounts to more than one million dollars per year. Lea & Perrins Worcestershire Sauce is of recognized and uniform excellence and has had a Nation-wide popularity for many years. The wholesale price of Lea & Perrins Worcestershire Sauce is $2.75 per dozen bottles. It retails at 30¢ per bottle. There is a preference among the consuming public for Lea & Perrins Worcestershire Sauce as against the Worcestershire Style Sauce of respondent.

The size and shape of the bottles containing Lea & Perrins Worcestershire Sauce and the features of the Lea & Perrins label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. In the course and conduct of his business, as described in paragraph 1 hereof, Arthur Longfield, in connection with the sale and distribution of his Worcestershire Style Sauce, has packaged the same in a manner closely resembling in appearance the containers of Lea & Perrins Worcestershire Sauce. The same distinctive sizes and shapes of bottles have been used, the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme, and other distinctive feature in the printed matter simulating the Lea & Perrins label and package.

In furtherance of this simulation, there has been copied from the Lea & Perrins label the following: "From the recipe of a nobleman in the country," which is inclosed in scrolls simulating those used on

the label of Lea & Perrins Worcestershire Sauce. In truth, and in fact the recipe for respondent's sauce was not furnished by a nobleman in Worcestershire, England, and is not, as implied, made under the secret recipe used by Lea & Perrins, Inc. In furtherance of his attempt to simulate the label of Lea & Perrins, respondent has used in the center of said wrapper or label a shield closely resembling in appearance the shield used by Lea & Perrins, Inc., in the label on its Worcestershire Sauce.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on its said Lea & Perrins Worcestershire Sauce and the same statement as to the source of the recipe under which the respondent's sauce is made as appears on the Lea & Perrins Worcestershire Sauce containers, as aforesaid, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, Inc., have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that the respondent's Worcestshire Style Sauce is in fact the Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from his said competitor, Lea & Perrins, Inc. As a result thereof, injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1939, issued and on June 19, 1939, served its complaint in this proceeding upon the respondent, Arthur Longfield, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said

complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, Arthur Longfield, is an individual with his principal place of business at 419 East 22d Street, New York, N. Y.

PAR. 2. The respondent is now and for several years last has been engaged in the manufacture, sale and distribution of a table sauce under the brand and label of "Longfield's Celebrated Worcestershire Style Sauce." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than New York. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of said business, respondent is now and has been at all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling or offering for sale in commerce between and among the various States of the United States, products intended to be used for the same purposes as the product sold by respondent.

PAR. 4. Worcestershire Sauce was originally made in the County of Worcestershire in England. In about the year 1835, John Wheeley Lea and William Perrins, chemists, commenced the manufacture and sale of this sauce from a private recipe which they, according to the tradition in the Lea and Perrins families, had acquired from an English nobleman, Sir Marcus Sandys, who had brought said recipe, or one similar thereto, from India, where similar though more pungent, sauces were in vogue. To this article of commerce, new in England, Messrs. Lea & Perrins gave the name "Worcestershire Sauce." It was extensively advertised in England and most other parts of the world and became very popular. In about the year 1840 the sauce was first imported into the United States. It was imported in bottles wrapped and labeled ready for sale until 1877. From 1877 to 1898 it was brought over from England in

casks, partly finished. Upon arrival in this country the manufacture of the sauce was completed according to the private formula of Messrs. Lea & Perrins above referred to. The bottling and labeling were then done in this country. From 1898 to 1911 the sauce was manufactured in the United States for Lea & Perrins by John Duncan's Sons under the original formula. From 1911 to 1930 the English firm of Lea & Perrins themselves conducted the manufacture of Lea & Perrins Sauce in New York City. Prior to June 1, 1930, there was organized a New York corporation known as Lea & Perrins, Inc., which was and is owned and controlled by the English corporation known as Lea & Perrins, Ltd. Lea & Perrins, Ltd., acquired the entire world-wide business of the English partnership of Lea & Perrins, manufacturers of Lea & Perrins Worcestershire Sauce. Since June 2, 1930, Lee & Perrins, Inc., has manufactured and sold Lea & Perrins Worcestershire Sauce, made under the orginal private and secret recipe throughout the United States. The business of this corporation in the sale of Worcestershire Sauce in the United States amounts to more than one million dollars per year. Lea & Perrins Worcestershire Sauce is of recognized and uniform excellence and has had a Nation-wide popularity for many years. The wholesale price of Lea & Perrins Worcestershire Sauce is about $2.75 per dozen bottles. It retails at about 30¢ per bottle. There is a preference among the consuming public for Lea & Perrins Worcestershire Sauce as against the Worcestershire Style Sauce of respondent.

The size and shape of the bottles containing Lea & Perrins Worcestershire Sauce and the features of the Lea & Perrins label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 5. In the course and conduct of his business as hereinabove described, Arthur Longfield, in connection with the sale and distribution of his Worcestershire Style Sauce, has packaged the same in a manner closely resembling in appearance the containers of Lea & Perrins Worcestershire Sauce. The same distinctive sizes and shapes of bottles have been used, the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme, and other distinctive features in the printed matter simulating the Lea & Perrins label and package.

In furtherance of this simulation there has been copied from the Lea & Perrins label the following: "From the recipe of a nobleman in the county," which is enclosed in scrolls simulating those used on the label of Lea & Perrins Worcestershire Sauce. In truth and in

fact the recipe for respondent's sauce was not furnished by a nobleman in Worcestershire, England, and is not, as implied, made under the secret recipe used by Lee & Perrins, Inc. In furtherance of his attempt to simulate the label of Lea & Perrins, respondent has used in the center of said wrapper or label a shield closely resembling in appearance the shield used by Lea & Perrins, Inc., on the label of its Worcestershire Sauce.

PAR. 6. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on its said Lea & Perrins Worcestershire Sauce and the same statement as to the source of the recipe under which the respondent's sauce is made as appears on the Lea & Perrins Worcestershire Sauce containers, as aforesaid, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, Inc., have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire Style Sauce is in fact the Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from his said competitor, Lea & Perrins, Inc.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in the complaint, and states that he waives all intervening procedure and further hearing as to the said facts, 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, Arthur Longfield, his representatives, agents and employees, directly or through any corporate

or other device, in connection with the offering for sale, sale, and distribution of Worcestershire Style Sauce in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing their Worcestershire sauce, or in any other manner, that respondent's Worcestershire sauce is manufactured and distributed by Lea & Perrins, Inc., or is the same as the Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. The use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., on its Worcestershire sauce.

3. The use of any design or insignia on wrappers, containers, labels, or in any other manner which simulate the design or insignia used by Lea & Perrins, Inc., in connection with their Worcestershire sauce.

4. Representing that the recipe used in the manufacture of respondent's Worcestershire sauce has any foreign or special origin 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.

IN THE MATTER OF

PETERSIME INCUBATOR COMPANY

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

Docket 3883. Complaint, Aug. 31, 1939—Decision, Oct. 28, 1939

Where a corporation engaged in the manufacture of its "Petersime Electro-Thermo Bath" for applying dry heat to the body, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements which it disseminated through the mails, through newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of said device—

(a) Represented, directly or by implication, that use thereof provided a way to better health and constituted a cure or remedy for overweight or underweight, and for low metabolism, and would cleanse the system and keep it fit, insuring protection against disease and cleansing system of poisons, toxins, and wastes; and

(b) Represented, as aforesaid, that said device was a cure or remedy for and had substantial therapeutic value in the treatment of many diseases and ailments and, more particularly, rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, neuritis, and lumbago;

Facts being it was, as aforesaid, device for applying dry heat to body, would not effect permanent change in weight in either direction (unless limited to temporary loss of weight), would not have any direct influence on basal metabolism or promote better health, or eliminate, cleanse, etc., poisons, toxins, and wastes that could not be taken care of by normal processes of elimination, and was not a cure or remedy for rheumatism and numerous other ailments and conditions above claimed, and regular use thereof might be harmful, especially to people who were debilitated and with deficient circulation;

With tendency and capacity to mislead and deceive prospective purchasers of said device into erroneous and mistaken belief that said representations were true, and to induce them to purchase said device because of such belief; and

(c) Failed to reveal in its advertisements that regular use of its said electro-thermo bath might be harmful and especially to debilitated individuals and those with deficient circulation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Lynn C. Paulson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Petersime Incubator Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 respondent, Petersime Incubator Co., is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business in the city of Gettysburg, in said State. The respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing, selling, and distributing, among other things, a device for applying dry heat to the body, known as "Petersime Electro-Thermo Bath."

Respondent sells said device to dealers and direct to members of the purchasing public, and causes said device, when sold, to be shipped from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold and distributed 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false

statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

The easy way to better health.

Are you overweight? Do you have rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, catch colds easily?

Would you like to: relax easily, soothe frayed nerves, enjoy restful sleep, keep physically fit?

Are you overweight, rheumatic, neurotic, or underweight? Do you have arthritis, sciatica, neuritis, lumbago, colds, or low metabolism? Are you nervous, fatigued, or troubled with insomnia?

These symptoms may often be attributed to poor elmination—lack of excretion through the pores of the skin. If you would like to enjoy the invigorating, cleansing benefits of a cabinet sweat bath at a small cost of only 3¢ to 4¢ per home treatment, then send for our home treatment today.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, and does now represent, directly and by implication, that the use of such device is a cure or remedy for, and has substantial therapeutic value in the treatment of, many diseases and ailments of the human body, to wit: Rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism, and many others not specifically set forth herein; that the use of such device will competently and effectively work wonders in restoring its users to sound health; will cleanse the human system and keep it fit, and insure protection against disease.

PAR. 3. In truth and in fact, said device advertised, sold, and distributed by respondent as hereinbefore stated, is a device for applying dry heat to the body, and is not a cure or remedy for any disease or a competent treatment therefor.

The said device is not a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism, or a competent treatment therefor.

The use of said Petersime Electro-Thermo Bath Cabinet will not effect a permanent change in body weight in either direction unless limited to a temporary loss of weight. Said device will not have any direct influence on basal metabolism or promote better health, and will not eliminate, cleanse, rid, purge, carry away or dispose of poisons,

toxins, or wastes that cannot be taken care of by the normal process of elimination.

Furthermore, the regular use of the said Petersime Electro-Thermo Bath Cabinet may be harmful, especially to debilitated individuals, and persons with deficient circulation.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said device, 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 and mistaken belief that such false statements, representations, and advertisements are true and that respondent's device will accomplish the results indicated, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1939, issued and served its complaint in this proceeding upon respondent, Petersime Incubator Co., a corporation charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 2, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all other intervening procedure and further hearing as to said facts. 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 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, Petersime Incubator Co., is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business in the city of Gettysburg, in said State. Respondent is now, and for more than 1

year last past has been, engaged in the business of manufacturing, selling, and distributing, among other things, a device for applying dry heat to the body, known as "Petersime Electro-Thermo Bath."

Respondent sells said device to dealers and direct to members of the purchasing public, and causes said device when sold to be shipped from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold and distributed 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by means of the United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

The easy way to better health.

Are you overweight? Do you have rheumatism, arthritis, sciatica, gout, kidney trouble, nervousnes, high blood pressure, catch colds easily?

Would you like to: relax easily, soothe frayed nerves, enjoy restful sleep, keep physically fit?

Are you overweight, rheumatic, neurotic, or underweight? Do you have arthritis, sciatica, neuritis, lumbago, colds, or low metabolism° Are you nervous, fatigued, or troubled with insomnia?

These symptoms may often be attributed to poor elimination—lack of excretion through the pores of the skin. If you would like to enjoy the invigorating, cleansing benefits of a cabinet sweat bath at a small cost of only 3¢ to 4¢ per home treatment, then send for our home treatment today.

Through the use of the statements hereinabove set out and others similar thereto not mentioned herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, and now represents, directly or by implication, that said device is a cure or remedy for, and has substantial therapeutic value in the treatment of, many of the diseases and ailments of the human body, and more particularly rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, underweight, neuritis, lumbago, and low metabolism; that the use of said device will work wonders in restoring its users to sound health, will cleanse the human system and keep it fit, insure protection against disease, and will eliminate, cleanse, rid, purge, carry away or dispose of poisons, toxins, or wastes that can not be taken care of by the normal processes of elimination.

PAR. 3. The Commission finds that the said device "Petersime Electro-Thermo Bath" is a device for applying dry heat to the body, and is not a cure or a remedy nor a competent treatment for any disease; that said device is not a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism; that the use of said "Petersime Electro-Thermo Bath" will not effect a permanent change in body weight in either direction, unless limited to a temporary loss of weight; that said device will not have any direct influence on basal metabolism or promote better health, and will not 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; that the regular use of the said "Petersime Electro-Thermo Bath" cabinet may be harmful, especially to debilitated individuals and persons with deficient circulation.

PAR. 4. Each and all of the representations as to the efficacy of respondent's "Petersime Electro-Thermo Bath" cabinet, contained in respondent's advertising as set forth herein, had and have a tendency and capacity to mislead and deceive purchasers and prospective purchasers of said device into the erroneous and mistaken belief that said representations are true, and to induce them to purchase respondent's said device because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public, and constitute unfair and deceptive acts and practices 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 respondent, Petersime Incubator Co., a corporation, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearings on the charges set forth in said complaint, and that, without further evidence or other intervening procedure the case might proceed to final hearing on the record, and the Commission having made its findings as to the facts and conclusion that said respondent, Petersime Incubator Co., a corporation, has violated the provisions of the Federal Trade Commisison Act.

It is ordered, That the respondent, Petersime Incubator Co., a corporation, it officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of a device now designated by the name of Petersime Electro-Thermo Bath, or any other similar device or devices, whether sold under the same name or any other name or names, which advertisements (1) represent, directly or through implication, (*a*) that the use of the said device Petersime Electro-Thermo Bath, provides a way to better health; (*b*) that the use of the said device is a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, underweight, neuritis, lumbago, low metabolism, or any other disease or ailment of the human body, or that its use is a competent treatment therefore; (*c*) that the use of said device will lessen or increase body weight unless such representation is limited to a statement that the use of said device may effect a temporary loss of weight;

(*d*) that said device will have any direct influence on basal metabolism, or that it will 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; (2) or which advertisements fail to reveal that the regular use of the said device may be harmful, especially to debilitated individuals, and persons with deficient circulation.

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

LOU STERLING AND WALTER FEHR GARDNER, TRADING AS KIRK MEDICINE COMPANY

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

Docket 3770. Complaint, Apr. 20, 1939—Decision, Oct. 30, 1939

Where two individuals engaged in sale of their variously designated "Kirk's Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound," to purchasers in various other States; in advertisements which they disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce, and through continuities broadcast from radio stations of extrastate audience, and through other means, and which were intended and likely to induce purchase of their said products—

(*a*) Represented that there was an alkaline content in said tablets which aided nature in neutralizing and eliminating acid accumulations in digestive system, and that stomach distress, headaches, backaches, dizzy spells, indigestion, and excessive accumulation of gas were very often direct result of accumulation of toxic poison in digestive system, and that almost immediate relief from such ailments was secured through use of said tablets, facts being there was no alkalizing substance in said tablets and such preparation was not cure or remedy for, or effective in treatment of, stomach distress, headaches, and other ailments and conditions mentioned and including excessive accumulation of gas in the stomach, and would not give relief therefrom;

(*b*) Represented that headachy, listless, worn-out feeling, backaches, upset stomach, and lack of appetite, were caused by acid indigestion due, in great many cases, to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief had been found by thousands of users of said tablets, as attested by thousands of letters received by said individuals from such users, facts being thousands of users had not attested to beneficial results secured from use of tablets as asserted by them, and their preparation would not relieve the digestive system of bacteria and would not give relief by neutralizing and eliminating bacterial action therein; and

(c) Represented that their tablets would give relief by neutralizing and eliminating bacterial action, caused, in most cases, by absence of enough bile and pancreatic acidity, and that they were highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic undernourishment, facts being they would not correct disorders of defective digestion, nor give relief in all cases of chronic undernourishment;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and inducing said portion of

such public, because of said belief, to buy their drug-containing medicinal preparation:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. George E. Stoddard, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Lou Sterling and Walter Fehr Gardner, are copartners trading as Kirk Medicine Co., and their principal place of business is located in Hollywood, Calif. The respondent Lou Sterling resides at 12024 Addison Street, North Hollywood, Calif., and the respondent Walter Fehr Gardner maintains a business address at c/o Allied Advertising Agency, Harth Building, 3d and Western Avenue, Los Angeles, Calif.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution of a medicinal or pharmaceutical preparation variously designated as "Kirk's Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound." In the course and conduct of their business the respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails,

by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State or country in which such broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. The alkaline content of Kirk's Tablets aid nature in neutralizing and eliminating the acid accumulated in the digestive system.

2. Stomach distress, headaches, back aches, dizzy spells, indigestion, excessive accumulation of gas are very often the direct result of accumulated toxic poisons in the digestive system. Almost immediate relief is found through use of Kirk's Tablets. * * *

3. Do you have that headachy, listless, worn out feeling, back aches, upset stomach and no appetite— * * * acid indigestion. The accumulation of bacteria in the digestive system is the answer in a great many cases, as is attested in the thousands of letters we have received from users of Kirk's Tablets, who have found almost instant relief from their use.

4. The bacterial action is caused, in most cases, by an absence of enough bile and pancreatic acidity and, in such cases, this condition must be neutralized and eliminated before you get relief. Kirk's Tablets do this.

5. Their use is highly recommended for all symptoms of inactive gall bladder and liver action, in all disorders of defective digestion, in all cases of chronic under nourishment, so . . . if you suffer from any of the symptoms of these stomach and digestive disorders . . . try Kirk's Tablets at once.

PAR. 4. Through use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, the following:

1. That there is an alkaline content in Kirk's Tablets which aids nature in neutralizing and eliminating the acid accumulation in the digestive system.

2. That stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas are very often the direct result of accumulated toxic poisons in the digestive system, and that almost immediate relief from such ailments is secured through the use of Kirk's Tablets.

3. That headachy, listless, worn out feeling, back aches, upset stomach, and lack of appetite, are caused by acid indigestion, due in a great many cases to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief has been found by thousands of users of Kirk's Tablets as attested by thousands of letters received by the respondents from such users.

4. That Kirk's Tablets give relief by neutralizing and eliminating bacterial action which, in most cases, is caused by absence of enough bile and pancreatic acidity.

5. That Kirk's Tablets are highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic under nourishment.

PAR. 5. The aforesaid representations, used and disseminated by the respondents in the manner above described, are gross exaggerations, which are misleading and untrue, and constitute false advertisements.

In truth and in fact the representations that there is an alkaline content in Kirk's Tablets which will aid nature in eliminating the acid accumulations in the digestive system, are untrue in that Kirk's Tablets contain no alkalizing substance. Said preparation would not be a cure or remedy for, or effective in the treatment of, or give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

Furthermore, thousands of users have not attested to the beneficial results secured from the use of the tablets as asserted by the respondents. Respondents' preparation will not relieve the digestive system of bacteria and will not give relief by neutralizing and eliminating bacterial action in the digestive system.

Said preparation will not correct disorders of defective digestion, and will not give relief in all cases of chronic under nourishment.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said medicinal preparation,

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 and mistaken belief that such false statements, representations and advertisements are true, and induces a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' medicinal preparation containing drugs.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 20, 1939, issued and served its complaint in this proceeding upon the respondents Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 8, 1939, the respondents filed their answers to said complaint. Thereafter, at a regularly scheduled hearing, a stipulation as to the facts was entered of record and it was agreed that said stipulation of facts should become the evidence in this proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation as to the facts (no briefs having been filed 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. Respondents, Lou Sterling and Walter Fehr Gardner, are copartners trading as Kirk Medicine Co., and their principal place of business is located in Hollywood, Calif. The respondent Lou Sterling resides at 12024 Addison Street, North Hollywood, Calif., and the respondent Walter Fehr Gardner maintains a business address at c/o Allied Advertising Agency, Harth Building, 3d and Western Avenue, Los Angeles, Calif.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution of a medicinal or pharmaceutical preparation variously designated as "Kirk's Tablets,"

"Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound." The quantitative formula for said product is as follows:

Pancreatic Enzymes	2 grains.
Sodium Glycocholate	½ grain.
Sodium Taurocholate	½ grain.
Extract Cascara Sagrada	1¼ grains.
Extract Nux Vomica	1/20 grain.
Oleoresin Ginger	1/16 grain.

In the course and conduct of their business the respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State or country in which such broadcasts originate, any by other means in commerce, as commerce is defined in the Federa Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. The alkaline content of Kirk's Tablets aid nature in neutralizing and eliminating the acid accumulated in the digestive system.

2. Stomach distress, headaches, back aches, dizzy spells, indigestion, excessive accumulation of gas are very often the direct result of accumulated toxic poisons in the digestive system. Almost immediate relief is found through use of Kirk's Tablets. * * *

3. Do you have that headachy, listless, worn out feeling, bach aches, upset stomach and no appetite— * * * acid indigestion. The accumulation of bacteria in the digestive system is the answer in a great many cases, as is attested in the thousands of letters we have received from users of Kirk's Tablets, who have found almost instant relief from their use.

4. The bacterial action is caused, in most cases, by an absence of enough bile and pancreatic acidity and, in such cases, this condition must be neutralized and eliminated before you get relief. Kirk's Tablets do this.

5. Their use is highly recommended for all symptoms of inactive gall bladder and liver action, in all disorders of defective digestion, in all cases of chronic under nourishment, so * * * if you suffer from any of the symptoms of these stomach and digestive disorders * * * try Kirk's Tablets at once.

PAR. 4. Through use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, the following:

1. That there is an alkaline content in Kirk's Tablets which aids nature in neutralizing and eliminating the acid accumulation in the digestive system.

2. That stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas are very often the direct result of accumulated toxic poisons in the digestive system, and that almost immediate relief from such ailments is secured through the use of Kirk's Tablets.

3. That headachy, listless, worn out feeling, back aches, upset stomach, and lack of appetite, are caused by acid indigestion, due in a great many cases to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief has been found by thousands of users of Kirk's Tablets as attested by thousands of letters received by the respondents from such users.

4. That Kirk's Tablets give relief by neutralizing and eliminating bacterial action which, in most cases, is caused by absence of enough bile and pancreatic acidity.

5. That Kirk's Tablets are highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic under nourishment.

PAR. 5. The aforesaid representations, used and disseminated by the respondents in the manner above described, are gross exaggerations, which are misleading and untrue, and constitute false advertisements.

In truth and in fact the representations that there is an alkaline content in Kirk's Tablets which will aid nature in eliminating the acid accumulations in the digestive system, are untrue in that Kirk's Tablets contain no alkalizing substance. Said preparation would not be a cure or remedy for, or effective in the treatment of, or give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

Furthermore, thousands of users have not attested to the beneficial results secured from the use of the tablets as asserted by the respondents. Respondents' preparation will not relieve the digestive system of bacteria and will not give relief by neutralizing and eliminating bacterial action in the digestive system.

Said preparation will not correct disorders of defective digestion, and will not give relief in all cases of chronic under nourishment.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparation, 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 and mistaken belief that such false statements, representations and advertisements are true, and induces a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 and a stipulation as to the facts entered upon the record (no briefs having been filed and 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., or trading under any other name or through any corporate or other device, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal preparation now designated and sold as "Kirks Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound," or of any other medicinal preparation containing substantially the same ingredients or possessing substantially the same properties whether sold under that name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist representing:

1. That said preparation will aid nature in eliminating the acid accumulations in the digestive system or that said preparation contains an alkalizing substance.

2. That said preparation is a cure or remedy for, or that it is effective in the treatment of, or that it will give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

3. That thousands of users have attested to the beneficial results obtained from the use of said preparation.

4. That said preparation will relieve the digestive system of bacteria or that it will give relief by neutralizing and eliminating bacterial action in the digestive system.

5. That said preparation will correct disorders of defective digestion or that it will give relief in all cases of chronic undernourishment.

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

E. A. MORGAN AND COMPANY, AND E. A. MORGAN

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

Docket 3771. Complaint, Apr. 24, 1939—Decision, Oct. 31, 1939

Where a corporation and an individual, who was president and owner thereof and directed and controlled its sales policies and other activities with respect to acts and practices below set out, engaged in packaging powdered preparation, variously designated as "Run-Safe," "Run-Free," and "Runless," for improving, as represented, wearing qualities of hosiery and lingerie, and in selling and distributing said product through direct selling methods and sales persons and representatives who solicited orders therefor from prospective purchasers in the various States and in the District of Columbia, and also in thus selling and distributing said product in response to orders received at their place of business—

(*a*) Represented, through statements on labels affixed to containers of such product, and through their agents and sales representatives, and otherwise, and through use of names "Run-Safe," "Run-Free," and "Runless," that their said preparation prevented runs, snags, and breaks in silk hosiery and lingerie; and

(*b*) Represented that use of their said product would reduce hosiery and lingerie cost approximately 50 percent, and would set and hold the color of such products and prevent rotting and fading, and render such products "Rain-Spot Proof";

Facts being product in question would not prevent runs, snags, and breaks in silk hosiery and lingerie, nor prevent rotting or fading, nor set or hold the color thereof, nor render them "Rain-Spot Proof," and would not save for users approximately 50 percent of hosiery and lingerie costs, though it might increase resistance to runs in certain types of hosiery;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of their said preparation because of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. Edward H. Brink, Jr., of Cincinnati, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that E. A. Morgan & Co., a corporation, and E. A. Morgan, individually, hereinafter re-

ferred to as respondents, have violated the provisions of the 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, E. A. Morgan & Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 412 Building Industries Building, Cincinnati, Ohio. The respondent, E. A. Morgan, of the same address, is president and owner of said respondent corporation, and directs and controls the sales policies and other activities of said corporate respondent with respect to the acts and practices herein described. Respondents are now and for more than 1 year last past have been engaged in the business of packaging, selling and distributing a powdered preparation variously designated as "Run-Safe," "Run-Free," and "Runless," and which is represented as improving the wearing qualities of hosiery and lingerie.

PAR. 2. Respondents sell said products by direct selling methods and by means of sales persons and representatives who solicit orders for said product from prospective purchasers situated in the various States of the United States and in the District of Columbia. Respondents also receive orders for said product at their said place of business in the State of Ohio from purchasers in various States of the United States other than Ohio, and in the District of Columbia, and cause said product when sold to be shipped from their aforesaid place of business in the State of Ohio to said purchasers located in the various States of the United States other than Ohio, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said product 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 as aforesaid and for the purpose of inducing the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, respondents have made and are now making representations with respect to the quality and effectiveness of their said product by means of statements appearing on labels affixed to containers of said product and by means of representations made to prospective purchasers by agents and sales representatives of respondents, and by other means. Among and typical of said representations so used and caused to be used by respondents in the manner aforesaid are and have been the following:

Run-Safe: Cuts Hosiery Expense in Half. Insures your hosiery and lingerie against runs, snags and breaks.

Sets the color, no more rotting or fading.
Rain-Spot Proof.

PAR. 4. By means of the aforesaid statements, together with other statements of similar import or meaning, not herein set out, and by the use of the names "Run-Safe," "Run-Free," and "Runless," as designations of such preparation, respondents represent, directly or by inference, that their product prevents runs, snags and breaks in silk hosiery and lingerie; that it prevents rotting and fading; that it sets or holds the color of silk hosiery and lingerie; that its use renders silk hosiery and lingerie "Rain-Spot Proof" and that it will save for its users approximately 50 percent of hosiery and lingerie cost.

PAR. 5. In truth and in fact the aforesaid statements and representations disseminated as aforesaid by respondents are false and misleading, in that the use of respondents' said product will not stop or prevent runs, snags, and breaks in silk hosiery or lingerie, will not prevent rotting or fading and will not set or hold the color of silk hosiery or lingerie. The use of said product will not render silk hosiery and lingerie rain-spot proof, and will not save for its users approximately 50 percent of hosiery and lingerie cost or any other substantial sum.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 and mistaken belief that said statements and representations are true, and into the purchase of respondents' said product because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, 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 April 1939 issued and on the 25th day of April 1939, served its complaint in this proceeding upon the respondents, E. A. Morgan & Co., a corporation, and E. A. Morgan, individually, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 11, 1939 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 through their counsel, Edward H. Brink, Jr., Esq., 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, accepted and filed, 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, E. A. Morgan & Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 412 Building Industries Building, Cincinnati, Ohio. The respondent, E. A. Morgan, of the same address, is president and owner of said respondent corporation, and directs and controls the sales policies and other activities of said corporate respondent with respect to the acts and practices herein described. Respondents are now and for more than 1 year last past have been engaged in the business of packaging, selling, and distributing a powdered preparation variously designated as "Run-Safe," "Run-Free," and "Runless," and which is represented as improving the wearing qualities of hosiery and lingerie.

PAR. 2. Respondents sell said product by direct selling methods and by means of sales persons and representatives who solicit orders for said product from prospective purchasers situated in the various States of the United States and in the District of Columbia. Respondents also receive orders for said product at their said place of business in the State of Ohio from purchasers in various States in the United States other than Ohio, and in the District of Columbia, and cause said product when sold to be shipped from their aforesaid place of business in the State of Ohio to said purchasers located in the various States of the United States other than Ohio, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said product 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 as aforesaid and for the purpose of inducing the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, respondents have made and are now making representations with respect to the quality and effectiveness of their said product by means of statements appearing on labels affixed to containers of said product and by means of representations made to prospective purchasers by agents and sales representatives of respondents, and by other means. Among and typical of said representations so used and caused to be used by respondents in the manner aforesaid are and have been the following:

Run-Safe: Cuts Hosiery Expense in Half. Insures your hosiery and lingerie against runs, snags and breaks.

Sets the color, no more rotting or fading.

Rain-Spot Proof.

PAR. 4. By means of the aforesaid statements, together with other statements of similar import or meaning, not herein set out, and by the use of the names "Run-Safe," "Run-Free," and "Runless", as designations of such preparation, respondents represent, directly or by inference that their product prevents runs, snags and breaks in silk hosiery and lingerie; that it prevents rotting and fading; that it sets or holds the color of silk hosiery and lingerie; that its use renders silk hosiery and lingerie "Rain-Spot Proof" and that it will save for its users approximately 50 percent of hosiery and lingerie cost.

PAR. 5. In truth and in fact the aforesaid statements and representations disseminated as aforesaid by respondents are false and misleading, in that the use of respondents' said product will not stop or prevent runs, snags, and breaks in silk hosiery or lingerie, will not prevent rotting or fading and will not set or hold the color of silk hosiery or lingerie. The use of said product will not render silk hosiery and lingerie rainspot proof, and will not save for its users approximately 50 percent of hosiery and lingerie costs; but may increase the resistance to runs in certain types of hosiery.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 and mistaken belief that said statement and representations are true, and into the purchase of respondents' said product because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices 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 respondents, and a stipulation as to the facts entered into between the respondents herein by their counsel, Edward H. Brink, Jr., Esq., 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 the Federal Trade Commission Act.

It is ordered, That the respondent, E. A. Morgan & Co., a corporation, its officers, representatives, agents, and employees, and the respondent, E. A. Morgan, individually, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a powdered preparation designed for application to silk hosiery and lingerie which preparation is now designated as "Run-Safe," "Run-Free," and "Runless," in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the terms, "Run-Safe," "Run-Free" and "Runless," or any other terms of similar import or meaning to designate or describe such preparation, or in any other manner, that such product when applied to silk hosiery or lingerie will stop or prevent or insure against runs, snags, or breaks.

2. Representing that the use of said product will reduce hosiery and lingerie costs approximately 50 percent, or will set or hold the color of silk hosiery and lingerie, or will prevent rotting or fading, or will render silk hosiery and lingerie rain-spot proof.

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

THE WAHL COMPANY

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

Docket 3836. Complaint, June 27, 1939—Decision, Oct. 31, 1939

Where a corporation engaged in manufacture of its "Eversharp" fountain pens and in sale and distribution of such pens to purchasers thereof at their respective points of location in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid; in advertising its said pens in magazines and other publications of general circulation throughout the various States and in said District, and in circulars and other literature which were distributed to persons in various States and in said District—

(*a*) Represented, through use of term "Leak Proof" and through such statements, among others, as "Trust it Anywhere * * * Can't Leak!" and depiction showing pen, uncapped, on white muff with point at slanting position and lower than other end, that said pens would not leak; and

(*b*) Represented that its pens were equipped with a special device which would prevent their leaking, through such statements as "* * * won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on," and other statements similarly stressing effectiveness of said "Safety Ink Shut-Off," together with depictions purporting to illustrate such effectiveness as well as construction of its said pens;

Facts being that said "Shut-Off" device, designed to prevent ink from flowing into feed duct of pen from reservoir in barrel when cap of pen was screwed tightly over pen point, did not prevent ink in feed duct of pen immediately prior to attachment of cap from leaking into cap after it was screwed tightly over point, and such ink would leak into cap of pen when it was shaken or jostled, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions, and under certain circumstances ink could and would leak or escape from said fountain pens equipped with such device when the pens were uncapped and the points exposed, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions; and

(*c*) Represented that their said pens held "more than double the volume of ink," facts being they did not hold more than twice as much ink as pens offered and sold by competitors, but had an ink capacity which was substantially less than such amount;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase, because of such belief, of substantial quantities of its said pens, and with result, as direct consequence, that trade in commerce was diverted unfairly to it from its competitors aforesaid:

Held, That such acts and practices, under the circumstances set out, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. Karl Stecher for the Commission.

Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The Wahl Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, The Wahl Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its office and principal place of business located at 1800 Roscoe Street in the city of Chicago, State of Illinois. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling and distributing fountain pens designated "Eversharp." Respondent causes said fountain pens, when sold, to be transported from its aforesaid place of business in the State of Illinois, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the business of selling and distributing fountain pens 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 aforesaid business, and for the purpose of inducing the purchase of its said Eversharp fountain pens, the respondent has caused various statements and representations relative to said fountain pens to be inserted in advertisements in magazines, periodicals, and other publications hav-

ing a general circulation throughout the various States of the United States and the District of Columbia, and in circulars and other literature, which are distributed to persons situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

In one of respondent's said advertisements there is depicted one of respondent's Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off," resting on a white muff. The pen is uncapped with the point exposed, and is in a slanting position so that the point thereof is lower than the other end of the pen. Directly beneath this depiction is the following statement in large and conspicuous type:

TRUST IT ANYWHERE * * * THE EVERSHARP PEN CAN'T LEAK!

Respondent also causes the following statements and representations to be inserted in various of the aforesaid advertisements relative to said fountain pens:

The Eversharp Pen won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on.

Leak Proof.

Careful, Mister, Careful—That fountain pen in your coat pocket is upside down. And—if it's an ordinary fountain pen—you're likely to find, when you go to sign your next check, that ink has leaked from the pen barrel into the cap. Only Eversharp has a "stopper" that prevents such leakage—only Eversharp has the *Safety Ink Shut-Off.*

If you run for a trolley or dash through traffic, ink can't be jounced out of the pen barrel and into the cap—Eversharp's Safety Ink Shut-Off sees to that!

Get one for your wife, too—* * * whether she swings her bag—drops it—or turns it upside down—the ink just can't leak *into the cap of the pen.*

Screw the cap firmly in place and it closes a tiny valve—prevents ink flooding from the pen barrel into the cap when the pen is jounced or subjected to high-altitude air pressure and temperature changes.

The Eversharp pen holds more than double the volume of ink.

In one of said advertisements there are depictions which purport to illustrate the effectiveness of the so-called "Safety Ink Shut-Off," with which said Eversharp pens are equipped, in preventing said pens from leaking. One depiction designated "Uncorked" purports to represent a cross-section of the pen as it is uncapped and with the pen point exposed. The barrel of the pen and the feed mechanism from the barrel to the pen point are shown to be filled with ink. The other depiction in said advertisement purports to represent a cross-section of the pen as it is when the cap is screwed tightly over the pen point. The barrel of the pen is shown to be filled with ink but the feed mechanism from the barrel to the pen point is devoid of ink.

PAR. 4. Through the use of the aforesaid statements and representations by the respondent, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that ink cannot leak from its Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when the pen is uncapped and the pen point exposed; that ink cannot leak from said pen into the cap of the pen when the cap is screwed tightly over the pen point, and that Eversharp pens possess more than twice as much ink capacity as the fountain pens offered for sale and sold by competitors of the respondent.

PAR. 5. The aforesaid statements and representations by respondent relative to the Eversharp fountain pens are false and misleading. Ink can leak from respondent's said fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when said pens are uncapped and the pen points exposed, and ink does leak therefrom when the pens are shaken or jostled. Ink can also leak from said fountain pens, equipped with said device, into the caps of the pens when the caps are screwed tightly over the pen points. The so-called "Safety Ink Shut-Off" device is designed to prevent ink from flowing into the feed mechanism of the pen from the barrel thereof when the cap of the pen is screwed tightly over the pen point. Said device does not prevent the ink which is in the feed mechanism of the pen immediately prior to the attachment of the cap from leaking into the cap of the pen after the cap is screwed tightly over the pen point, and such ink does leak into the cap of the pen when the pen is shaken or jostled.

In truth and in fact said Eversharp pens do not hold more than twice as much ink as the fountain pens offered for sale and sold by competitors of the respondent. In fact, such pens have an ink capacity of substantially less than said amount.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said fountain pens because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective fountain pens do not leak and who do not misrepresent the ink capacity of their respective fountain pens. In consequence thereof injury is being, and

has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 June 27, 1939, issued and subsequently served its complaint in this proceeding upon respondent charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, W. T. Kelley, chief counsel for the Federal Trade Commission, and Winston, Strawn & Shaw, counsel for 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 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 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Wahl Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its office and principal place of business located at 1800 Roscoe Street in the City of Chicago, State

of Illinois. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing fountain pens designated "Eversharp." Respondent causes said fountain pens, when sold, to be transported from its aforesaid place of business in the State of Illinois, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the business of selling and distributing fountain pens 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 aforesaid business, and for the purpose of inducing the purchase of its said Eversharp fountain pens, the respondent has caused various statements and representations relative to said fountain pens to be inserted in advertisements in magazines, periodicals, and other publications having a general circulation throughout the various States of the United States and in the District of Columbia, and in circulars and other literature, which are distributed to persons situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

In one of respondent's said advertisements there is depicted one of respondent's Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off," resting on a white muff. The pen is uncapped with the point exposed, and is in a slanting position so that the point thereof is lower than the other end of the pen. Directly beneath this depiction is the following statement in large and conspicuous type:

"TRUST IT ANYWHERE. * * * THE EVERSHARP PEN CAN'T LEAK!"

Respondent also caused the following statements and representations to be inserted in various of the aforesaid advertisements relative to said fountain pens:

The Eversharp Pen won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on.

Leak Proof.

Careful, Mister, Careful—That fountain pen in your coat pocket is upside down. And—if it's an ordinary fountain pen—you're likely to find, when you go to sign your next check, that ink has leaked from the pen barrel into the cap. Only Eversharp has a "stopper" that prevents such leakage—only Eversharp has the *Safety Ink Shut-Off*.

If you run for a trolley or dash through traffic, ink can't be jounced out of the pen barrel and into the cap—Eversharp's Safety Ink Shut-Off sees to that.

Get one for your wife, too— * * * whether she swings her bag—drops it—or turns it upside down—the ink just can't leak *into the cap of the pen.*

Screw the cap firmly in place and it closes a tiny valve—prevents ink flooding from the pen barrel into the cap when the pen is jounced or subjected to high-altitude air pressure and temperature changes.

The Eversharp pen holds more than double the volume of ink.

In one of said advertisements there are depictions which purport to illustrate the effectiveness of the so-called "Safety Ink Shut-Off," with which said Eversharp pens are equipped, in preventing said pens from leaking. One depiction designated "Uncorked" purports to represent a cross-section of the pen as it is uncapped and with the pen point exposed. The reservoir in the barrel of the pen and the feed duct from the reservoir to the pen point are shown to be filled with ink. The other depiction in said advertisement purports to represent a cross-section of the pen as it is when the cap is screwed tightly over the pen point. The reservoir in the barrel of the pen is shown to be filled with ink, but the feed duct from the barrel to the pen point is devoid of ink.

PAR. 4. Through the use of the aforesaid statements and representations by the respondent, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that ink cannot leak from its Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when the pen is uncapped and the pen point exposed; that ink cannot leak from said pen into the cap of the pen when the cap is screwed tightly over the pen point, and that Eversharp pens possess more than twice as much ink capacity as the fountain pens offered for sale and sold by competitors of the respondent.

PAR. 5. The aforesaid statements and representations by respondent relative to its Eversharp pens are inaccurate and misleading. The so-called "Safety Ink Shut-Off" device, with which some of respondent's fountain pens are equipped, is designed to prevent ink from flowing into the feed duct of the pen from the reservoir in the barrel thereof when the cap of the pen is screwed tightly over the pen point. Said device does not prevent the ink which is in the feed duct of the pen immediately prior to the attachment of the cap from leaking into the cap of the pen after the cap is screwed tightly over the pen point, and such ink does leak into the cap of the pen when

the pen is shaken or jostled, but in no greater amount than it does in the case of other high quality fountain pens not so equipped, and only under substantially the same conditions.

Under certain conditions ink can, and does, leak or escape from respondent's said fountain pens equipped with the "Safety Ink Shut-Off" device, when said pens are uncapped and the pen points exposed, but in no greater amount than it does in the case of other high quality fountain pens not equipped with the "Safety Ink Shut-Off," and only under substantially the same conditions.

Eversharp fountain pens do not hold more than twice as much ink as the fountain pens offered for sale and sold by competitors of the respondent. In fact, such pens have an ink capacity of substantially less than said amount.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said fountain pens because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, The Wahl Co., as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the 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, The Wahl Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fountain pens, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Leak-Proof" or any other term or terms of similar import or meaning to designate or describe respondent's fountain pens, or in any other manner, that the respondent's fountain pens will not leak, unless and until said fountain pens are so designed and constructed that they will not leak.

2. Representing that respondent's fountain pens are equipped with any special or patented device which will prevent leakage unless and until said fountain pens are so equipped that no leakage will occur.

3. Misrepresenting the ink capacity of its fountain pens.

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

BRUNSWICK WORSTED MILLS, INC., AND GEORGE O. LECKIE AND HENRY C. HASKELL, TRADING AS LECKIE & HASKELL

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

Docket 3880. Complaint, Aug. 26, 1939—Decision, Oct. 31, 1939

Where a corporation engaged in manufacture of worsteds and other woolen fabrics, and in sale thereof to manufacturers of men's suits and other articles of merchandise, and two individuals, engaged as exclusive agents, practically, in sale of fabrics made by said corporation, and in substantial competition, as aforesaid, with others engaged in selling and distributing various woolen fabrics in commerce among the various States—

Offered and sold said worsted and other products or fabrics made by corporation in question from mixture of fibers consisting of 80 percent wool and of 20 percent rayon, indistinguishable, or practically indistinguishable, as interwoven with wool as aforesaid, by manufacturers and consuming public from materials and garments made entirely from wool, without disclosing, by tags, labels, invoices, advertising, or in any other sales promotional descriptions or representations, or in any other way, that products or fabrics in question contained rayon in such or in any other substantial amount;

With capacity and tendency to mislead manufacturers of garments and other articles of merchandise and purchasers thereof into accepting same as being composed entirely of wool, and as understood from word "worsted," unqualified, by manufacturing and consuming public, as being such all wool fabrics having particular weave or construction and, in case of garments or other articles made therefrom, as being entirely of wool, and with result that number of manufacturers, dealers, and members of purchasing public bought substantial volume of their products, and trade was diverted unfairly to them from competitors also engaged in sale and distribution of woolen fabrics in commerce and who fully disclose constituent fibers of which their fabrics are composed:

Held, That such acts and practices, and each of them, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.

Mr. Roger B. Coulter of Sawyer, Hardy, Stone & Morrison, of Boston, Mass., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that said Brunswick

Worsted Mills, Inc., a corporation, and George O. Leckie and Henry C. Haskell, individually and as copartners, trading as Leckie & Haskell, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Brunswick Worsted Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located in the town of Moosup, State of Connecticut.

Respondents George O. Leckie and Henry C. Haskell are copartners doing business under the trade or firm name and style of Leckie & Haskell, with their principal place of business at 257 Fourth Avenue, city of New York, State of New York.

PAR. 2. Respondent Brunswick Worsted Mills, Inc., is now, and for many years last past has been, engaged in the manufacture and sale of worsteds and other woolen fabrics which are sold to manufacturers of men's suits and other articles of merchandise. The respondents George O. Leckie and Henry C. Haskell, trading as Leckie & Haskell, are the exclusive agents of the corporate respondent in the sale of the fabrics manufactured by it. Respondents cause said fabrics, when sold by them, to be shipped from the mill of the corporate respondent in the State of Connecticut to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, individuals, firms, and partnerships engaged in selling and distributing various woolen fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. During the many years that they have conducted business, the respondents have established a reputation among the trade as dealers in woolen fabrics exclusively and are still so considered. Due to the long continued dealing in exclusively woolen fabrics, it was the practice of the respondents in the offering for sale and

selling said fabrics to do so by number and sample without such fabrics being labeled or their fiber content being otherwise identified or disclosed.

Recently, however, the respondents have sold and distributed a fabric composed in part of wool and in part of rayon in commerce among and between the several States of the United States. In the offering for sale and sale of this product the respondents have not disclosed the material content of said fabric, but instead have offered said fabric for sale in the same manner as was customary in connection with their exclusively woolen fabrics.

By reason of respondents' reputation as dealers in woolen fabrics exclusively and their failure to disclose that said fabrics were a mixture of wool and rayon either by designation or description in invoicing, labeling or advertising said products, the purchasers thereof, relying on such reputation, were led to believe that the products so offered for sale and sold by the respondents consisted exclusively of wool.

PAR. 5. Over a period of many years fabrics made of all wool or woolen materials have established a reputation of possessing superior cold-resisting and wearing qualities over fabrics made from rayon or other fibers. On account of such reputation, purchasers and prospective purchasers of suits and other wearing apparel have a decided preference for wool fabrics over fabrics composed in part of rayon or other fibers.

The word "worsted" standing alone and unqualified is understood by the manufacturing and consuming public to be a fabric composed entirely of wool and having a particular weave or construction, and garments and other articles of merchandise made therefrom are understood by them to be made entirely of wool.

The word "rayon" is the name of a chemical fiber, and when rayon is interwoven with wool, as in said material and garments made therefrom as above set forth, is practically indistinguishable by the manufacturing and consuming public from material and garments made entirely of wool. By reason of this fact, when fabrics and garments and other articles of merchandise are composed and woven as above described and are not designated or described as being in part made of rayon, they have the capacity and tendency to, and do mislead and deceive the manufacturers of garments and other articles of merchandise and the purchasers thereof into accepting the same as being composed entirely of wool.

PAR. 6. The use by the respondents of the aforesaid practice of failing to disclose the fact that certain of their fabrics were, and are, composed in part of rayon has had, and now has, the tendency and

capacity to mislead and deceive manufacturers, dealers, and a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are composed wholly of wool, and enables manufacturers of suits, garments, and other articles of merchandise to pass said products off to the purchasing and consuming public as being genuine worsted or composed entirely of wool. On account of this erroneous and mistaken belief a number of manufacturers, dealers, and members of the purchasing public have purchased a substantial volume of respondents' products, with the result that trade has been diverted unfairly to the respondents from their competitors who are also engaged in the sale and distribution of woolen fabrics in commerce among and between the various States of the United States and who do not falsely represent or fail to disclose the constituent fibers of which their fabrics are composed. As a consequence 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. 7. 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of August 1939, issued and served its complaint in this proceeding upon respondents Brunswick Worsted Mills, Inc., a corporation, and George O. Leckie and Henry C. Haskell, individually, and as copartners trading as Leckie & Haskell, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. On the 15th day of September 1939, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of fact signed and executed by the respondents' counsel, Roger B. Coulter, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as to 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 the 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, accepted, and filed, 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, Brunswick Worsted Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located in the town of Moosup, State of Connecticut.

Respondents, George O. Leckie and Henry C. Haskell, are copartners doing business under the trade or firm name and style of Leckie & Haskell, with their principal place of business at 257 Fourth Avenue, city of New York, State of New York.

PAR. 2. Respondent, Brunswick Worsted Mills, Inc., for a number of years last past has been engaged in the manufacture and sale of worsteds and other woolen fabrics which are sold to manufacturers of men's suits and other articles of merchandise. The respondents George O. Leckie and Henry C. Haskell, trading as Leckie & Haskell, as aforesaid, are practically the exclusive agents of said respondent in the sale of the fabrics manufactured by it. Respondents cause said fabrics, when sold, by them, to be shipped from the mill of the corporate respondent in the State of Connecticut to the purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fabrics in commerce among and between the various States of the United States.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States with other corporations, individuals, firms, and partnerships engaged in selling and distributing various woolen fabrics in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business, as described in paragraph 2 hereof, said respondents, in their various capacities, referred to above, for some time prior to June 1938, offered for sale,

sold, and distributed in commerce, as commerce is defined by the Federal Trade Commission Act, certain worsted and other products or fabrics manufactured by the said corporation from a mixture of fibers consisting of 80 percent wool and 20 percent rayon, without disclosing by tags, labels, invoices, advertising, or in any sales promotional descriptions or representations thereof, or in any other way, the fact that such products or fabrics contained rayon in such or any other substantial amount. Rayon, when so mixed with wool, is indistinguishable by manufacturers and the public from a wholly wool product or fabric.

PAR. 5. Over a period of years fabrics made of all wool or worsted materials have established a reputation of possessing superior cold resisting and wearing qualities over fabrics made from rayon or a combination of rayon and other fibers. On account of such reputation, purchasers and prospective purchasers of suits and other wearing apparel have a preference for wool fabrics over fabrics composed in part of rayon or rayon and wool or other fibers.

The word "worsted" standing alone and unqualified is understood by the manufacturing and consuming public to be a fabric composed entirely of wool and having a particular weave or construction, and garments or other articles of merchandise made therefrom are understood by them to be made entirely of wool.

The word "rayon" is the name of a chemical fiber, and when rayon is interwoven with wool, as in said materials and garments made therefrom, as above set forth, it is practically indistinguishable by the manufacturers and consuming public from materials and garments made entirely from wool, as aforesaid. By reason of this fact, when fabrics, garments, and other articles of merchandise are composed and woven as above described and are not designated as being made in part of rayon, they have the capacity and tendency to mislead the manufacturers of garments and other articles of merchandise and the purchasers thereof into accepting the same as being composed entirely of wool. On account of this erroneous and mistaken belief a number of manufacturers, dealers, and members of the purchasing public have purchased a substantial volume of respondents' products with the result that trade has been diverted unfairly to the respondents from their competitors, who were also engaged in the sale and distribution of woolen fabrics in commerce among and between the various States of the United States, and who fully disclose the constituent fibers of which their fabrics are composed.

CONCLUSION

The aforesaid acts and practices of respondents, and each of them, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Brunswick Worsted Mills, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, and the respondents George O. Leckie and Henry C. Haskell, individually, and as copartners trading as Leckie & Haskell, in connection with the offering for sale, sale, and distribution of fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from offering for sale, selling, or distributing any fabric or product composed in part of wool and in part of rayon, or any other fiber without making full and nondeceptive disclosure of the fiber content thereof, by stating the true names of the fibers present, in the order of predominance by weight, and by stating the percentages of such fibers as are present therein; provided, however, that it shall not be necessary to state the percentage of rayon or fiber other than wool, if the rayon or fiber other than wool be used exclusively for decorative purposes and is plainly visible as a decoration, and the same being not more than 5 percent of the whole fabric or product by weight.

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.

IN THE MATTER OF

LAING, HARRAR & CHAMBERLIN, INC., A. J. SANBORN SONS, INC., HARRY FAIN AND ALFRED PICERNO

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

Docket 3725. Complaint, Feb. 28, 1939—Decision, Nov. 2, 1939

Where a corporation engaged in sale and distribution of shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers, including corporation and two individuals engaged, in competition with one another and others prior to acts below set forth, in distribution and sale at wholesale of such products in trade area in and around the city of Providence—

(*a*) Entered into an understanding and agreement whereby said distributor corporation undertook not to sell and distribute its products to third individual, likewise engaged as wholesaler of such articles in said city, lacking consent of corporate and individual wholesalers first referred to; and

Where said corporate and individual wholesalers first referred to—

(*b*) Undertook, as part of understanding and agreement aforesaid, not to purchase any of the articles sold and distributed by corporate distributor first referred to in event of its violating its agreement and selling to said third individual contrary to the wishes of said corporate wholesaler and other two wholesaler individuals;

With result that said agreeing corporation discontinued sale of its articles to individual in question, competitor of said corporate wholesaler and wholesaler individuals, and purchaser, prior thereto, from such discontinuing corporation of substantial quantities of its articles:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors and the public, and had a dangerous tendency to and did hinder and prevent competition in sale of shoe findings, leather, and supplies for shoe stores and shoe repair shops, and unreasonably restrained commerce therein and constituted unfair methods of competition.

Mr. Daniel J. Murphy for the Commission.

Mr. Walter W. Hess, of Philadelphia, Pa., for Laing, Harrar & Chamberlin, Inc.

Remington, Thomas & Levy, of Providence, R. I., for A. J. Sanborn Sons, Inc., Harry Fain and Alfred Picerno.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Laing, Harrar &

Chamberlin, Inc., A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, hereinafter referred to as respondents, have violated the provisions of the 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 Laing, Harrar & Chamberlin, Inc., is a corporation organized under the laws of the State of Delaware and having its office and principal place of business at 43 North Third Street in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent A. J. Sanborn Sons, Inc., is a corporation organized under the laws of the State of Rhode Island and having its office and principal place of business at 20 Exchange Place in the city of Providence, State of Rhode Island.

Respondent Harry Fain is an individual doing business under the name and style of Fain Leather Co., and having an office and principal place of business at 36 Broad Street in the city of Providence, State of Rhode Island.

Respondent Alfred Picerno is an individual doing business under the name and style of Cipolla & Picerno, and having an office and principal place of business at 7 Vinton Street in the city of Providence, State of Rhode Island.

PAR. 2. Respondent Laing, Harrar & Chamberlin, Inc., is now and has been for more than 2 years last past engaged in the business of selling and distributing shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers thereof.

Respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno are, and have been for more than 2 years last past, engaged in the business of distributing and selling, as wholesale dealers, shoe findings, leather, and supplies for shoe stores and shoe repair shops, in the trade area in and around Providence, R. I.

PAR. 3. In the course and conduct of their respective businesses, respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno purchased, and are still purchasing, shoe findings, leather, and other supplies for shoe stores and shoe repair shops, from respondent Laing, Harrar & Chamberlin, Inc., and when said purchases are made, and as a part thereof, said respondent Laing, Harrar & Chamberlin, Inc. has shipped or caused to be shipped, and does ship or causes to be shipped, said articles from its place of business located in the State of Pennsylvania to the places of business of respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred

Picerno located in the State of Rhode Island. All of the respondents in the aforementioned manner maintained, and still do maintain, a course of trade in said articles in commerce between and among the several States of the United States.

PAR. 4. Prior to 1937, respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno were in active and substantial competition with each other and with other wholesale dealers in shoe findings, leather, and other supplies for shoe stores and shoe repair shops in the city of Providence, R. I., in reselling, and seeking to resell, the articles which were purchased from respondent Laing, Harrar & Chamberlin, Inc., in the manner aforementioned, to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I.; and, but for the respondents entering into and carrying out the understanding, agreement, combination, and conspiracy hereinafter set out, said active and substantial competition would have continued to the present.

PAR. 5. During 1937 respondents entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy for the purpose, and with the effect, of unlawfully restricting, restraining, monopolizing, repressing, and eliminating competition in resale between wholesale dealers in Providence, R. I., of shoe findings, leather, and other supplies for shoe stores and shoe repair shops, to shoe stores and shoe repair shops in the trade area in and around Providence, R. I.

PAR. 6. Pursuant to the understanding, agreement, combination, and conspiracy entered into by, between, and among respondents, and in furtherance thereof, said respondents have done and performed, and still do and perform the following acts and things:

1. Agreed that Laing, Harrar & Chamberlin, Inc. should refuse to sell, and it has refused to sell, its articles to any wholesale dealer in shoe findings, leather, and other supplies for shoe stores and shoe repair shops, in Providence, R. I., unless and until respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno consented that such sales could be made.

2. Agreed that respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno should designate, and they have so designated, other wholesale dealers in the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc., located in Providence, R. I., to whom respondent Laing, Harrar & Chamberlin, Inc. should not sell its said articles.

3. In order to abet and effectuate the agreement by respondent Laing, Harrar & Chamberlin, Inc. that it would refuse to sell its articles to those wholesale dealers in shoe findings, leather, and other

supplies for shoe stores and shoe repair shops in Providence, R. I., thus designated by respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, said respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno have agreed not to purchase any of the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc. if it violated its said agreement not to sell these designated wholesale dealers.

PAR. 7. Each of said respondents at the time mentioned herein, acted in concert with one or more of the other respondents, in doing and performing the acts and things herein alleged in furtherance of the understanding, agreement, combination, and conspiracy hereinbefore set out.

PAR. 8. The understanding, agreement, combination, and conspiracy hereinbefore set out, and the acts and things done thereunder and pursuant thereto, have had, and do have, the effect of unlawfully restricting and restraining their movement in commerce between and among the several States of the United States of the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc.; of unlawfully restricting and restraining the resale to shoe stores and shoe repair shops in the trade area in and around Providence, R. I., by wholesale dealers in shoe findings, leather and other supplies for shoe stores and shoe repair shops, of such articles purchased by said wholesale dealers from respondent Laing, Harrar & Chamberlin, Inc., in commerce between and among the several States of the United States; of preventing certain designated wholesale dealers in Providence, R. I., from securing the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc. in commerce, in the manner aforementioned, to be resold by said dealers to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I., thereby depriving such designated dealers of the means of competing with respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno in the resale of such articles to the shoe stores and shoe repair shops in said area; of substantially enhancing prices to the consuming public of certain articles which the public purchases from the shoe stores and shoe repair shops to which respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno resell the articles which they purchase from respondent Laing, Harrar & Chamberlin, Inc. in commerce between and among the several States of the United States, of maintaining such prices to the consuming public at artificial levels, and otherwise depriving the public of the benefits which would flow from normal competition between and among respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno and these designated wholesale dealers in

Providence, R. I., in their resale to shoe stores and shoe repair shops of articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc., in commerce, in the manner as described, with the tendency and capacity of creating for respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno a monopoly in said trade.

Said understanding, agreement, combination, and conspiracy, and the things done thereunder, and in pursuance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of February 1939, issued and served its complaint in this proceeding upon respondents, Laing, Harrar & Chamberlin, Inc., A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. On April 28, 1939, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and their counsel, Walter W. Hess and Arthur J. Levy, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be 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, answers, and stipulation, said stipulation having been approved, accepted, and filed, 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 Laing, Harrar & Chamberlin, Inc., is a corporation organized under the laws of the State of Delaware and having its office and principal place of business at 43 North Third Street in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent A. J. Sanborn Sons, Inc., is a corporation organized under the laws of the State of Rhode Island and having its office and principal place of business at 20 Exchange Place in the city of Providence, State of Rhode Island.

Respondent Harry Fain is an individual doing business under the name and style of Fain Leather Co., and having an office and principal place of business at 36 Broad Street in the city of Providence, State of Rhode Island.

Respondent Alfred Picerno is an individual formerly doing business under the name and style of Cipolla & Picerno and formerly having an office and principal place of business at 7 Vinton Street in the city of Providence, State of Rhode Island, which business was discontinued on or about June 15, 1938.

PAR. 2. Respondent Laing, Harrar & Chamberlin, Inc., is now and has been for more than 2 years last past engaged in the business of selling and distributing shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers thereof.

Respondents A. J. Sanborn Sons, Inc. and Harry Fain are and have been for more than 3 years last past and respondent Alfred Picerno was until about June 15, 1938, and for more than 2 years previous thereto, engaged in the business of distributing and selling, as wholesale dealers, shoe findings, leather, and supplies for shoe stores and shoe repair shops, in the trade area in and around Providence, R. I.

PAR. 3. In the course and conduct of their respective businesses, respondents A. J. Sanborn Sons, Inc. and Harry Fain purchased and are still purchasing and the respondent Alfred Picerno purchased and until about June 15, 1938, continued to purchase, shoe findings, leather, and other supplies for shoe stores and shoe repair shops, from respondent Laing, Harrar & Chamberlin, Inc., and when such purchases are or were made, and as a part thereof, said respondent Laing, Harrar & Chamberlin, Inc. has shipped or caused to be shipped, and does ship or causes to be shipped, said articles from its place of business located in the State of Pennsylvania to the places of business of the respondents A. J. Sanborn Sons, Inc. and Harry Fain, located in the State of Rhode Island and the respondent Alfred Picerno formerly located in the State of Rhode Island. All of the respondents in the aforementioned manner maintained, and except in the case of the respondent Alfred Picerno, still do maintain, a course of trade in said articles in commerce between and among the several States of the United States.

PAR. 4. Prior to 1937, respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno were in active and substantial competition with each other and with other wholesale dealers in shoe findings, leather, and other supplies for shoe stores and shoe repair shops in the city of Providence, R. I., in reselling, and seeking to resell, the articles which were purchased from respondent Laing, Harrar & Chamberlin, Inc., in the manner aforementioned, to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I.; and, but for the respondents entering into and carrying out the understanding and agreement, hereinafter set out, said active and substantial competition would have continued uninterruptedly to the present, except in the case of the respondent Alfred Picerno who discontinued business as aforesaid.

PAR. 5. During 1937, respondents entered into, and thereafter carried out, an understanding and agreement whereby:

1. Respondent Laing, Harrar & Chamberlin, Inc., agreed not to sell and distribute its articles to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., a wholesale dealer in shoe findings, leather, and other supplies for shoe stores and shoe repair shops, in Providence, R. I., unless and until respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno consented that such sales could be made.

2. Respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno agreed not to purchase any of the articles sold and distributed by Laing, Harrar & Chamberlin, Inc., if said Laing, Harrar & Chamberlin, Inc., violated its agreement and sold to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., contrary to the wishes of said respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno.

As a result of said understanding and agreement being carried out in concert by and between said respondents, respondent Laing, Harrar & Chamberlin, Inc., did, on or about December 3, 1937, to about May 18, 1938, discontinue the sale of its articles to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., a wholesaler in Providence, a competitor of respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno. The said Irving Schretter, prior to December 3, 1937, purchased substantial quantities of articles from respondent Laing, Harrar & Chamberlin, Inc., which were sold and distributed in commerce in the manner aforementioned.

CONCLUSION

The acts and practices of the respondents as herein set forth are all to the prejudice of the competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act; have unreasonably restrained such commerce in shoe findings, leather, and supplies for shoe stores and shoe repair shops 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 entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commisison 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 the Federal Trade Commission Act.

It is ordered, That the respondents, A. J. Sanborn Sons, Inc., its officers, representatives, agents, and employees, Harry Fain and Alfred Picerno, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out any agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, or between any one of said respondents and a manufacturer of such products, for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the purchase or sale in said commerce of any of such products, and from doing any of the following acts and things pursuant thereto:

1. Boycotting, or threatening to boycott, or using any other coercive methods or means, to persuade, induce, or compel manufacturers or

distributors of such products to refrain from selling any of such products to any wholesale dealer in such products.

2. Interfering, in any manner, with any competitive wholesale dealer's source of supply of such products.

It is further ordered, That the respondent, Laing, Harrar & Chamberlin, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into any agreement, understanding, combination, or conspiracy for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the purchase or sale of such products in said commerce; or from aiding or abetting the carrying out of any such agreement, understanding, combination, or conspiracy by refusing to sell such products to wholesale dealers engaged in the sale and distribution of such products because of inducements offered, or coercive methods used, by competitors of such wholesalers.

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

CHRISTOPHER 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 3394. Complaint, Apr. 29, 1938—Decision, Nov. 7, 1939

Where a corporation engaged in manufacture of candy, and in sale and distribution of certain assortments thereof, which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consuming public, and included (1) number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars to purchasing public under a plan in accordance with which customer received, for 5 cents paid, one, two, three, or four bars, depending upon name of fish concealed and displayed within discs of card, and disclosed by chance selection, and purchaser of last push was entitled to five bars of candy in question, and (2) number of boxes of candy and punchboard for use in sale of said candy to purchasers under a plan, and in accordance with legend displayed thereon, by which purchaser or customer received, for 5 cents paid, one of said boxes or nothing, dependent upon success or failure in securing by chance certain numbers concealed within holes of board, and (3) various other assortments of candy, so packed and assembled as to involve use of a lottery scheme in sale and distribution to purchasing public under methods similar to those above described and varying therefrom in detail only—

Sold such assortments, along with said punchboards or devices to retailer purchasers, by whom assortments in question were displayed and sold 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 candy in accordance with such plans, as above set forth, involving game of chance or sale of a chance to procure boxes and bars of candy at prices much less than prevailing price for like or similar candy in usual course of retail trade, contrary to the established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many who are unwilling to offer or sell their candy by any sales plan or method which involves game of chance, gift enterprise, lottery scheme, or any method or sales plan contrary to public policy, and refrain therefrom;

With effect of inducing numerous customers to purchase candy manufactured and sold by it in preference to that sold by competitors who had not used and did not use like or similar sales plans or methods in sale or distribution of their products, and with result that substantial trade was diverted to it from its competitors 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. Charles P. Vicini*, trial examiner.

Mr. D. C. Daniel and *Mr. Reuben J. Martin* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Christopher Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Christopher Candy Co., is a corporation, organized and doing business under the laws of the State of Delaware, with its offices and principal place of business located at 4020 Avalon Boulevard, Los Angeles, Calif. 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 dealers. Respondent causes, and has caused, its products, when sold to be transported from its principal place of business in the city of Los Angeles, Calif., to purchasers thereof located in the State of California 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 respondent 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 its business, respondent is in competition with other corporations and with individuals and partnerships likewise 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 its business as described in paragraph 1 hereof, respondent sells and has sold to 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 consists of a number of bars of candy and a device commonly called a pushcard. Said bars of candy are distributed to the purchasing public by means of said push card in the following manner: Sales are 5 cents each. The push card contains a number of partially perforated discs. Within each of said discs is printed the name of a fish. The card bears statements informing purchasers and prospective purchasers that the names of certain fish entitle the purchasers thereof to one bar of candy; certain other names entitle the purchasers thereof to two bars of candy; certain other names entitle the purchasers thereof to three bars of candy; certain other names entitle the purchasers thereof to four bars of candy, the purchaser of the last push from said board being

entitled to five bars of said candy. Said names are effectively concealed from the purchasers and prospective purchasers until a purchase has been made and the disc separated from the card. The said bars of candy are thus distributed to the purchasers of pushes of said card wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving the lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy 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 the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy to purchase respondent's candy 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 additional bars 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 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 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 elements of chance or lottery. 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 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 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 respondents 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 a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its 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 create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by 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 the same method or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 29, 1938, issued and served its complaint in this proceeding upon the respondent Christopher Candy Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, answer having been filed by the respondent, 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 Robert W. Kaneen, general manager and vice-president of the respondent, before C. P. Vicini, 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 complaint, the answer, testimony and other evidence, brief in support of the complaint, respondent not having filed brief, and oral argument 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 Christopher Candy Co. is a corporation, organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business located at 4020 Avalon Boulevard, Los Angeles, Calif. It is now, and for some time last past has been, engaged in the manufacture of a general line of candy and in the sale and distribution of same to retail dealers.

PAR. 2. Respondent causes, and has caused, its candy when sold to be transported from its aforesaid place of business in the city of Los Angeles, Calif., to purchasers thereof located in the State of California and in other States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the regular course and conduct of its business, is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States and in the District of Columbia.

PAR. 4. In the regular course and conduct of its business, as hereinabove described, respondent sells and has sold to 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 consuming public. One of said assortments consists of a number of bars of candy of uniform size and shape, together with a device commonly known as a push card. Said bars of candy are distributed to the purchasing public by means of said push card in the following manner: sales are 5 cents each; the push card contains a number of partially perforated discs. Within each of said discs is printed the name of a fish; the card bears statements informing purchasers and prospective purchasers that the names of certain fish entitle the purchasers thereof to one bar of candy; certain other names entitle the purchasers thereof to two bars of candy; certain other names entitle the purchasers thereof to three bars of candy; certain other names entitle the purchasers thereof to four bars of candy, and the purchaser of the last push from said card is entitled to five bars of said candy. Said names, within each of said discs, are effectively concealed from the purchasers and prospective purchasers until the purchase has been made and the disc separated from the card. Whether a purchaser receives two, three, or four bars of said candy is determined wholly by lot or chance.

Another of said assortments consists of a number of boxes of candy, together with a device commonly known as a punchboard. Sales are

5 cents each, and each purchaser is entitled to one punch from said board. Said board has a number of holes in each of which there has been inserted a rolled slip of paper upon which is printed a number. On the face of said board there are certain instructions or legends which inform the purchasers and prospective purchasers that certain numbers concealed within said holes entitle the purchasers thereof to boxes of candy. Those purchasers who do not punch one of the lucky or winning numbers receive nothing for their money. The numbers inserted in said holes are concealed from purchasers and prospective purchasers until the said numbers have been punched, or removed from said board. The said boxes of candy are thus distributed to the consuming public wholly by lot or by chance.

Respondent has distributed various assortments of candy so packed and assembled as to involve the use of a lottery scheme when said candy was sold or distributed to the purchasing public, but the methods of distribution of said assortments are like or similar to the ones hereinabove described, varying only in detail.

PAR. 5. The Commission finds that retail dealers who purchased the assortments of candy hereinabove described exposed the same for sale and sold said candy in accordance with the aforesaid sales plans. Respondent thus supplied to, and placed in the hands of, others the means of conducting lotteries in the sale of its candy in accordance with the aforesaid sales plans, as described in paragraph 4 hereof. Said sales plans have the capacity and tendency to induce, and have induced, numerous customers to purchase candy manufactured and sold by respondent in preference to candy sold by competitors of respondent who have not, and do not, use like or similar sales plans or methods in the sale and distribution of candy sold by them.

PAR. 6. The sale and distribution of candy to the purchasing public in the manner, and by the methods described in paragraph 4 hereof, involves a game of chance, or the sale of a chance, to procure bars and boxes of candy at prices much less than the prevailing price for like or similar candy in the usual course of retail trade. The sale and distribution of candy by such method is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of the laws of several of the States of the United States.

PAR. 7. Among the competitors of respondent are many persons, firms, and corporations who sell and distribute like or similar candy to that sold and distributed by respondent which competitors are unwilling to offer for sale or sell their said candy by any sales plan or method which involves a game of chance, gift enterprise, lottery

scheme, or any other method or sales plan that is contrary to public policy, and said competitors refrain from the use of any such sales plan or method, and as a result thereof substantial trade has been diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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, testimony and other evidence taken before C. P. Vicini, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, brief of counsel for the Commission filed herein (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent Christopher Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with a push card, punchboard, or any other lottery device which said push card, punchboard, or other lottery device is to be used, or may be used, in selling or distributing said candy or other merchandise to the public.

3. Supplying to or placing in the hands of others push cards, punchboards or other lottery devices either with assortments of candy or other merchandise, or separately, which said push cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

4. Selling or otherwise disposing of candy or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

E. W. KNOWLTON, TRADING AS OLD MISSION TABLET COMPANY

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

Docket 3664. Complaint, Dec. 15, 1938—Decision, Nov. 7, 1939

Where an individual engaged in compounding, selling, and distributing his "Old Mission Tablets" or "O-M Tablets" to purchasers in various other States; in advertisements which he disseminated through periodicals, newspapers, and other publications circulating throughout the various States and through continuities broadcast from radio stations of extrastate audience, and through other means—

(*a*) Represented, directly or through implication, that his said preparation was identical with that which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States, and was prepared and used by such specialist, and one of the greatest tablets offered the public for general run-down stomach condition, and that, wherever known, it was one of the largest selling and most favored tablets therefor; and

(*b*) Represented, as aforesaid, that such tablets constituted an effective treatment for stomach and digestive troubles caused by costive weakened digestive system and for congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks, and that one or two tablets would ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks;

Facts being said tablets were not effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions were caused primarily by constipation, and use of one or two of said tablets would not ordinarily relieve such ailments and conditions, even though primarily thus caused, and said products did not constitute effective treatment for ailments and conditions variously set forth above, were not the identical form of tablets which helped build up reputation of one of greatest specialists, as aforesaid, and were not prepared or used by such specialist, and said individual's claims as to therapeutic value or efficacy of preparation in question were grossly exaggerated, false, and deceptive and greatly exceeded any claims as to the therapeutic value and efficacy thereof which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that product in question possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of purchasing public, because of such belief, to buy substantial quantities of said product, and of thereby diverting trade unfairly to him from his competitors in commerce who truthfully advertise the effectiveness of their medical and other preparations and products for use in treatment of ailments and conditions for

which said individual recommended his preparation in question; to the injury of competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. J. D. Kash for the Commission.

Mr. James A. Norman, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that E. W. Knowlton, an individual, trading as Old Mission Tablet Co., hereinafter referred to as respondent has violated the provisions of the 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 respondent, E. W. Knowlton, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated as "Old Mission Tablets" or "O-M Tablets." Respondent sells said preparation to members of the purchasing public situated in various States of the United States, and causes the said preparation, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, and with firms, partnerships, and corporations selling and distributing medicinal and other preparations and products designed and intended for use and used in the treatment of ailments and conditions of the human body for which respondent recommends the use of his said preparation. Among such competitors in said commerce are many

who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said preparation, respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers and other publications having a circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereto located in various States of the United States and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

When you take O-M Tablets you are taking the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States.

One of the greatest tablets of its kind ever offered to the public for general run-down stomach conditions.

O-M Tablets are one of the largest selling and most favored tablets wherever they are known. Try O-M Tablets and see for yourself how quickly they will relieve your stomach and digestive troubles, frequently caused by costive weakened digestive system. Try them for congestive stomach soreness—try them for sick headache, backache, dizzy spells or gastric stomach attacks. O-M Tablets often relieve these conditions almost from the first tablet or two.

PAR. 5. Through the use of the statement and representations hereinabove set forth and other similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that O-M Tablets are the identical tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States; that O-M Tablets are one of the greatest tablets offered to the public for general run-down stomach conditions; that O-M Tablets are one of the largest selling, most favored tablets wherever they are known; that O-M Tablets will quickly relieve the stomach and digestive troubles frequently caused by costive weakened digestive system; that they will relieve congestive stomach sore-

ness, sick headache, backache, dizzy spells, and gastric stomach attacks; and that relief from the above conditions is often attained from the use of the first tablet or two.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertisements. In truth and in fact, the representation that O-M Tablets are the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States is untrue; it is not the preparation prepared or used by the greatest stomach and kidney specialist in the United States; O-M Tablets are not one of the greatest tablets ever offered the public for general run-down stomach conditions; O-M Tablets are not one of the largest selling and most favored tablets wherever they are known for general run-down stomach conditions; O-M Tablets are not an effective treatment for the stomach and digestive troubles frequently caused by costive weakened digestive system, nor are they effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions are caused primarily by constipation; and the use of one or two of said tablets will not ordinarily relieve such ailments or conditions even though primarily caused by constipation.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said preparation 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 and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as

described in Paragraph Three. 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, and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 15, 1938 issued, and on December 19, 1938 served its complaint in this proceeding upon respondent, E. W. Knowlton, an individual trading as Old Mission Tablet Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, the Commission granted respondent's motion for the permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, E. W. Knowlton, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

PAR. 2. The respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated Old Mission Tablets or O-M Tablets. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes said preparation when sold by him to be transported from his aforesaid place of business in the State

of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, firms, partnerships, and corporations selling and distributing medical and other preparations and products designed and intended for use and used in the treatment of ailments and conditions of the human body for which respondent recommends the use of his said preparation. Among such competitors in commerce are many who do not in any manner misrepresent their preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of said preparation, respondent has caused false advertisements containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as commerce is defined in the Federal Trade Commission Act, through the use of magazines, newspapers, and other publications having a circulation throughout the various States of the United States and through continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

When you take O-M Tablets you are taking the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States.

One of the greatest tablets of its kind ever offered to the public for general run-down stomach conditions.

O-M Tablets are one of the largest selling and most favored tablets wherever they are known. Try O-M Tablets and see for yourself how quickly they will relieve your stomach and digestive troubles, frequently caused by costive weakened digestive system. Try them for congestive stomach soreness—try them for sick headache, backache, dizzy spells or gastric stomach attacks. O-M Tablets often relieve these conditions almost from the first tablet or two.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that O-M Tablets are the identical tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States; that O-M Tablets are one of the greatest tablets offered to the public for general run-down stomach conditions; that O-M Tablets are one of the largest selling, most favored tablets wherever they are known; that O-M Tablets will quickly relieve the stomach and digestive troubles frequently caused by costive weakened digestive system; that they will relieve congestive stomach soreness, sick headache, backache, dizzy spells and gastric stomach attacks; and that relief from the above conditions is often attained from the use of the first tablet or two.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertisements. In truth and in fact, the representation that O-M Tablets are the identical form of tablets which helped to build the reputation of one of the greatest stomach and kidney specialists in the United States is untrue; it is not the preparation prepared or used by the greatest stomach and kidney specialist in the United States; O-M Tablets are not one of the greatest tablets ever offered the public for general run-down stomach conditions; O-M Tablets are not one of the largest selling and most favored tablets wherever they are known for general run-down stomach conditions; O-M Tablets are not an effective treatment for the stomach and digestive troubles frequently caused by costive weakened digestive system, nor are they effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions are caused primarily by constipation; and the use of one or two of said tablets will not ordinarily relieve such ailments or conditions even though primarily caused by constipation.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation 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 and mistaken belief that such false statements, representations and advertisements are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. 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, and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, E. W. Knowlton, an individual trading as Old Mission Tablet Co., are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, 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, E. W. Knowlton, individually and trading as Old Mission Tablet Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is

defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondent's medicinal preparation now designated as Old Mission Tablets and O-M Tablets, or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or other names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said preparation is identical to the preparation which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States or that said preparation was prepared or used by the greatest kidney and stomach specialist in the United States; that said preparation is one of the greatest tablets offered to the public for general run down stomach condition, or that, wherever it is known, said preparation is one of the largest selling or most favored tablets for such condition; that said preparation is an effective treatment for stomach or digestive troubles caused by costive weakened digestive system; or that said preparation is an effective treatment for congestive stomach soreness, sick headaches, backaches, dizzy spells. or gastric stomach attacks unless such representations disclose that such effectiveness is limited to those cases wherein such conditions are caused primarily by constipation, or that one or two tablets of said preparation will ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks irrespective of whether such conditions are caused primarily by constipation.

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

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING COMPANY, CARLYLE SERVICE, MARVO MANUFACTURING COMPANY AND PEERLESS 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 3712. Complaint, Feb. 14, 1939—Decision, Nov. 7, 1939

Where an individual engaged in sale and distribution of product represented as preservative of silk hosiery and lingerie, under trade names "Supreme," "Marvel," "Marvo," and "Peerless," through direct selling methods and through sales persons and representatives who traveled from State to State and canvassed cities and towns therein and in the District of Columbia, and made general house-to-house canvass soliciting orders therefor through stereotyped sales talk furnished by him, and in substantial competition, as thus engaged, with others selling and distributing preparations for treating such products and increasing their durability and resistance to snags and runs, and including many who do not misrepresent that they manufacture products sold by them and do not misrepresent quality and effectiveness of their respective products or make any other similar false statements in connection with sale and distribution thereof—

(*a*) Represented, through statements on labels affixed to containers of product in question, and through sales talks made to prospective purchasers by his agents, directly or by implication, that use of his said product would prevent runs and snags in, or the rotting and fading of, hosiery and lingerie, and that through such use purchaser could save approximately 50 per cent of the cost of such articles; and

(*b*) Represented, as aforesaid, that such use strengthened heels and toes of silk hosiery and that hosiery treated therewith would last four or five times longer than it would without being so treated;

Facts being product in question would not stop runs or snags, prevent rotting or fading, make such a saving, or strengthen, as aforesaid, silk hosiery, with increase in durability or life thereof as above set forth; and

(*c*) Represented, as aforesaid, and through use of word "manufacturing" in various trade names employed by him, that he was manufacturer of the product in question, notwithstanding fact he was not such manufacturer;

With result that many members of the purchasing public, who are of opinion that advantage in price, service, or other respects is to be secured by purchasing direct from manufacturer without intervention of middlemen, were led, through use of trade names aforesaid, to believe that said individual was manufacturer of product in question and were caused to purchase same, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief his said representations as to efficacy of such product were true, and that he was manufacturer thereof, and of causing such substantial portion of public in question to buy his said product in preference to that of competitors, and of thereby diverting trade unfairly to him from competitors; to their injury and that of public:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John J. Keenan*, trial examiner.

Mr. John R. Phillips, Jr. for the Commission.

Morris, KixMiller & Baar, of Washington, D. C., and *Wright, Rogers & Margolin*, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that C. C. Johnson, an individual, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of the 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. C. Johnson, is an individual, trading and doing business as the Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co. and Peerless Manufacturing Co., with his principal office and place of business located at 1014 City National Bank Building in the city of Omaha, Nebr. Respondent is now and has been for several years last past engaged in the business of selling and distributing a preservative or mending powder for silk hosiery and lingerie under the trade names of Supreme, Marvel, Marvo, and Peerless, in commerce as hereinafter set out.

PAR. 2. Respondent sells said product by direct selling methods and by means of sales persons and representatives who travel from one State to another and canvass all cities and towns within the various States of the United States and in the District of Columbia and make a general house-to-house canvass soliciting orders for the respondent's product, said sales persons and representatives using a stereotype sales talk as furnished by the respondent. Respondent causes said product when sold to be shipped from his aforesaid place of business in the State of Nebraska to said purchasers located in various States of the United States other than the State of Nebraska and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is engaged in substantial competition with other individuals, and with partnerships, firms, and corporations

selling and distributing a preparation for treating silk hose and lingerie to increase their durability and their resistance to snags and runs in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not misrepresent that they are manufacturers of the products they sell, and who do not misrepresent the quality or effectiveness of their respective products, or make other similar false statements in connection with their sale and distribution.

PAR. 4. In the course and conduct of his business as aforesaid and for the purpose of inducing the purchase of said product in said commerce respondent has made and is now making representations with respect to his business status and with respect to the quality and effectiveness of his said product by means of statements appearing on labels affixed to containers of said product and by means of sales talks made to prospective customers by agents of respondent. Among and typical of said representations so used and caused to be used by said respondent in the manner aforesaid are and have been the following:

Supreme Manufacturing Company
Marvo Manufacturing Company
Peerless Manufacturing Company
No more runs and snags.
Prevents runs and snags.
No more rotting and fading.
Prevents rotting and fading.
Saves 50% on hosiery and lingerie expense. One treatment good for life of hose. Strengthens heels and toes.
Prevents the runs and snags in your silk hosiery and lingerie * * * strengthens the heel and toe of your hosiery, thereby making them last 4 or 5 times longer * * * this treatment is permanent * * * now this product will cut your hosiery and lingerie expense in half * * * also prevents the silk from rotting, and one treatment is sufficient for the life of the hose.

PAR. 5. All of said statements purport to be descriptive of his business status and of his product and of its effectiveness when used. In said statements and through other means respondent, directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents that his product prevents runs and snags in said hosiery, that it prevents rotting and fading, that the public generally are saved approximately 50 percent of silk hosiery and lingerie cost, that it strengthens the heels and toes of said hosiery, and that the life of the silk hosiery and lingerie is preserved due to the quality of the respondent's product; and that he manufactures the products he sells. Many consumers are of the opinion that an advantage in price, service and

other particulars is to be secured by purchasing direct from the manufacturer without the intervention of middlemen.

PAR. 6. In truth and in fact these representations thus made are false and misleading in that the respondent does not manufacture said product. Respondent's product will not stop or prevent runs or snags in silk hosiery and lingerie. It does not prevent silk from rotting and fading. It does not save the purchasing public 50 percent on hosiery and lingerie expense. The so-called treatment is not permanent and it does not strengthen the heels and toes of silk hosiery. In truth and in fact said product is manufactured by an independent manufacturer and the respondent purchases the chemical product from such independent manufacturer and distributes the said product under his various trade names as aforesaid.

PAR. 7. Each and all of said false and misleading statements are calculated to and have had and now 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 to cause, and have caused a substantial part of the purchasing public to purchase the products of respondent in preference to the products of his said competitors, and unfairly to divert business from them to respondent. As a result thereof injury has been done and is now 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. 8. The use of the aforesaid acts and practices by the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 14, 1939, issued, and on February 16, 1939, served, its complaint in this proceeding upon the respondent, C. C. Johnson, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, C. C. Johnson, is an individual, trading and doing business as the Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co. and Peerless Manufacturing Co., with his principal office and place of business located at 1014 City National Bank Building in the city of Omaha, Nebr. Respondent is now, and has been for several years last past, engaged in the sale and distribution of a product represented as a preservative of silk hosiery and lingerie under the trade names Supreme, Marvel, Marvo, and Peerless.

PAR. 2. Respondent sells said product by direct selling methods and by means of sales persons and representatives who travel from one State to another and canvass all cities and towns within the various States of the United States and in the District of Columbia and make a general house-to-house canvass soliciting orders for the respondent's product, said sales persons and representatives using a stereotyped sales talk as furnished by the respondent. Respondent causes said product when sold to be shipped from his aforesaid place of business in the State of Nebraska to said purchasers located in various States of the United States other than the State of Nebraska and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is engaged in substantial competition with other individuals, and with partnerships, firms, and corporations selling and distributing preparations for treating silk hosiery and lingerie to increase their durability and their resistance to snags and runs in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not misrepresent that they are manufacturers of the products they sell, and who do not misrepresent the quality or

effectiveness of their respective products, or make other similar false statements in connection with their sale and distribution.

PAR. 4. In the course and conduct of his business as aforesaid and for the purpose of inducing the purchase of said products in said commerce, respondent has made and is now making representations with respect to his business status and with respect to the quality and effectiveness of his said product by means of statements appearing on labels affixed to containers of said product and by means of sales talks made to prospective customers by agents of respondent. Among and typical of said representations so used and caused to be used by said respondent in the manner aforesaid are and have been the following:

Supreme Manufacturing Company.
Marvo Manufacturing Company.
Peerless Manufacturing Company.
No more runs and snags.
Prevents runs and snags.
No more rotting and fading.
Prevents rotting and fading.
Saves 50% on hosiery and lingerie expense.
One treatment good for life of hose.
Strengthens heels and toes.
Prevents the runs and snags in your silk hosiery and lingerie * * * strengthens the heel and toe of your hosiery, thereby making them last 4 or 5 times longer * * * this treatment is permanent * * * now this product will cut your hosiery and lingerie expense in half * * * also prevents the silk from rotting, and one treatment is sufficient for the life of the hose.

PAR. 5. All of said statements purport to be descriptive of respondent's business status and of his product and its effectiveness when used. Through the statements and representations hereinabove set out and others of similar import and meaning not herein quoted, respondent represents and implies that the use of his said product will prevent runs and snags in hosiery and lingerie; that it prevents rotting and fading; that through the use of said product approximately 50 percent of silk hosiery and lingerie costs can be saved; that the use of said product strengthens the heels and toes of silk hosiery, thereby making such hosiery last four or five times longer than it ordinarily would; and that the respondent is the manufacturer of said product.

PAR. 6. In truth and in fact, the use of respondent's said product will not stop runs or snags in silk hosiery or lingerie; it will not prevent rotting and fading; the use of said product will not save approximately 50 percent of silk hosiery and lingerie costs; the use of said product does not strengthen the heels and toes of silk hosiery,

thereby making such hosiery last four or five times longer than it ordinarily would; and the respondent is not the manufacturer of said product.

PAR. 7. Many members of the purchasing public are of the opinion that an advantage in price, service, or in other respects is to be secured by purchasing direct from the manufacturer of a product without the intervention of middlemen. The use by the respondent of the trade names Supreme Manufacturing Co., Marvo Manufacturing Co. and Peerless Manufacturing Co. in connection with the sale and distribution of said product leads many members of the purchasing public to believe that respondent is the manufacturer of the product and causes them to purchase said product.

PAR. 8. Each and all of said statements and representations have had, and do have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations as to the efficacy of said product are true, and that the respondent is the manufacturer thereof, and have caused, and do cause, a substantial portion of the purchasing public to purchase the product of the respondent in preference to the products of his competitors. In consequence thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his competitors to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, 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, C. C. Johnson, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product for the treatment of hosiery and lingerie now sold and distributed by the respondent under the trade names Supreme, Marvel, Marvo, and Peerless, or any other product composed of substantially the same ingredients or possessing substantially similar properties, whether sold under said names, or any other trade name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the use of said product will prevent runs and snags in, or the rotting and fading of, hosiery and lingerie.

2. Representing, directly or by implication, that through the use of said product, the purchaser can save approximately 50 percent of the cost of silk hosiery and lingerie.

3. Representing, directly or by implication, that the use of said product strengthens the heels and toes of silk hosiery, or that hosiery treated with said product will last four or five times longer than it would without being so treated, or that the use of said product will result in any substantial increase in the wearing qualities of silk hosiery.

4. Representing, through the use of the word "manufacturing," or any other word or term of similar import or meaning, as part of the trade name used by the respondent, or in any other manner or through any other means or device, that said respondent is the manufacturer of the product sold by him, unless and until such respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is manufactured by him.

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

THE PERASTHMAN COMPANY, INC., AND E. FOUGERA & CO., INC.

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

Docket 3719. Complaint, Feb. 20, 1939—Decision, Nov. 7, 1939

Where a corporation and its exclusive distributor engaged in manufacture, sale, and distribution of first-name corporation's "Perasthman" or "Perasthman Tablets" for asthma, and acting together and in cooperation with one another in acts and practices below set out; in advertisements which they disseminated through the mails, insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means, and which were distributed in commerce among the various States and were intended and likely to induce purchase of their said product—

(*a*) Represented that preparation in question constituted a cure for asthma and an effective treatment therefor, and for the symptoms thereof, and was of substantial therapeutic benefit in such treatment; and

(*b*) Represented that product in question was a new, sensational, European discovery, free from harmful drugs, and preparation which might be used promiscuously without harmful effects, and that use thereof was beneficial to all sufferers from said ailment and would assure nights of restful sleep and days of greater comfort, and stop wheezing and other symptoms of said condition;

Facts being it was not a cure therefor, nor of substantial therapeutic benefit in treatment thereof or of symptoms or manifestations of said condition, ephedrine, as only ingredient therein of any value to sufferers from asthma, had long been used by medical profession to afford, in some cases, temporary relief from symptoms or manifestations in question, and said preparation was neither new nor sensational and could not be used without harmful effects by all sufferers from asthma, but could only be used in limited quantities and under competent medical supervision by those with heart or kidney ailments, and might result, in case of unlimited and unsupervised use by such persons, in injury, and it had not accomplished and would not accomplish results claimed therefor, as above set forth, and only benefit that asthma sufferer could receive therefrom was temporary relief from some of manifestations of ailment, and it had not "freed" thousands or any other substantial number of asthma sufferers;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that said preparation was a cure for or of therapeutic benefit in treatment of asthma or symptoms and manifestations thereof, and that other representations and implications set out were true, and of inducing purchasing public, because of such belief, to purchase its said preparation, and with result of thereby unfairly diverting trade in commerce to them from those of their competitors who do not misrepresent efficacy and therapeutic value of their products; to the substantial injury of competitors in commerce and to injury of public:

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

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. John R. Phillips, Jr. for the Commission.
Mr. Walter L. Post, of New York City, for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Perasthman Co., Inc., and E. Fougera & Co., Inc., hereinafter referred to as respondents, have violated the provisions of the 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 Perasthman Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal office and place of business located at 276 Fifth Avenue in the city of New York, State of New York.

E. Fougera & Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 75 Varick Street in the city of New York, State of New York.

Respondent, The Perasthman Co., Inc., is now, and for more than 3 years last past has been, engaged in the manufacture of a proprietary medicine or preparation designated "Perasthman" or "Perasthman Tablets," an alleged remedy for asthma, and through the respondent, E. Fougera & Co., as its exclusive distributor, has been engaged in the business of selling and distributing said "Perasthman" or "Perasthman Tablets."

Respondents have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

Par. 2. Respondents cause said medical preparation, when sold, to be transported from their places of business in the State of New York to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said medical preparation 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 said business, respondents are now, and have been, in substantial competition with other corporations and with partnerships and individuals engaged in the business of selling and distributing similar preparations and preparations used and useful for the alleviation of the ailments and conditions where respondents' said preparation might be efficacious, in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondents many who truthfully advertise and represent their said preparations and their efficacy in use.

PAR. 4. Respondents, in the course and conduct of their aforesaid business, have disseminated, and have caused, and are now causing, the dissemination of, false advertisements concerning their said product, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, and by other means, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

A reproduction of a line drawing, showing a kneeling female figure with one hand clasping her throat and nearby a large hand holding a whip, the whip lash encircling the woman's waist. Beneath this drawing there appears in large caps the words "Slaves of Asthma." Following, in smaller capitals, are the words and phrases "Freed by the Thousands" and the following words and phrases:

Way to stop wheezing.
Wheezing stops.
Sleep soundly.
Quick relief.
Nights of restful sleep and days of greater comfort.
Sleep is restful.
Without dangerous drugs.
Attacks curbed or completely ended.
A sensational new European discovery.

Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which

purport to be descriptive of respondents' said preparation and its efficacy in the treatment of the ailment or condition commonly referred to as asthma and the symptoms and manifestations thereof, respondents represent and imply that said preparation will cure, or be of substantial therapeutic benefit in the treatment of asthma and the symptoms and manifestations thereof, and that said preparation is a new sensational European discovery, free from harmful drugs, and may be used promiscuously without harmful effects.

Respondents further represent that the use of said preparation has "freed" thousands from asthma; that its use will benefit all sufferers from asthma, assuring nights of restful sleep and days of greater comfort; and that it will stop "wheezing" and other symptoms and manifestations of asthma.

PAR. 5. The foregoing representations and implications used and disseminated by the respondents as above described are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, respondents' said preparation is not a cure for asthma nor is it of substantial therapeutic benefit in the treatment of asthma or the symptoms and manifestations thereof. The preparation is neither new nor sensational, as the only ingredient therein which is of any value to a sufferer from asthma is ephedrine, which has long been used by the medical profession, in some cases, to afford temporary relief from some symptoms or manifestations of asthma, but which is not used or recognized as a cure for asthma or the symptoms or manifestations thereof.

The preparation cannot be used without harmful effects by all sufferers from asthma, for the principal active ingredient therein, ephedrine, is not safe for use by persons with heart or kidney ailments, except in limited quantities and under competent medical supervision. The unlimited and unsupervised use of the preparation by such persons may result in injury.

The preparation has not "freed" thousands or any other substantial number of persons from asthma. It will not benefit all sufferers from asthma, nor does it assure the user of nights of restful sleep or days of greater comfort, and it will not stop "wheezing" or other symptoms or manifestations of asthma.

The only benefit that a sufferer from asthma could receive from the use of said preparation is temporary relief from some of the manifestations of asthma.

PAR. 6. The above and foregoing representations and implications used by respondents as to the therapeutic value and effect of their said preparation, in the course of their advertising, offering for sale, and sale of their said preparation in said commerce as aforesaid, have

the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said preparation is a cure for, or of therapeutic benefit in the treatment of, asthma or the symptoms and manifestations thereof, and that the other representations and implications as hereinabove set out are true and have had, and do have, the capacity and tendency to, and do, induce the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation, thereby unfairly diverting trade in said commerce to the respondents from those of their competitors who do not misrepresent the efficacy and therapeutic value of their said products. Thereby substantial injury is done to said competitors in 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.

PAR. 7. The aforesaid acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 20, 1939, issued, and on February 21, 1939 served, its complaint in this proceeding upon the respondents, The Perasthman Co., Inc., and E. Fougera & Co., Inc., corporations, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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 Perasthman Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal office and place of business located at 276 Fifth Avenue in the city of New York, State of New York.

E. Fougera & Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 75 Varick Street in the city of New York, State of New York.

Respondent, The Perasthman Co., Inc., is now, and for more than 3 years last past has been, engaged in the manufacture of a proprietary medicine or preparation designated "Perasthman" or "Perasthman Tablets," an alleged remedy for asthma, and through the respondent, E. Fougera & Co., as its exclusive distributor, has been engaged in the business of selling and distributing said "Perasthman" or "Perasthman Tablets."

Respondents have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

PAR. 2. Respondents cause said medical preparation, when sold, to be transported from their places of business in the State of New York to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said medical preparation 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 aforesaid business, respondents are now, and have been, in substantial competition with other corporations and with partnerships and individuals engaged in the business of selling and distributing similar preparations and preparations used and useful for the alleviation of the ailments and conditions where respondents' said preparation might be efficacious, in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondents many who truthfully advertise and represent their said preparations and their efficacy in use.

PAR. 4. Respondents, in the course and conduct of their aforesaid business, have disseminated, and have caused, and are now causing, the dissemination of, false advertisements concerning their said product, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars

and other printed or written matter and by other means, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

A reproduction of a line drawing, showing a kneeling female figure with one hand clasping her throat and nearby a large hand holding a whip, the whip lash encircling the woman's waist. Beneath this drawing there appears in large caps the words "Slaves of Asthma." Following, in smaller capitals, are the words and phrases "Freed by the Thousands" and the following words and phrases:

Way to stop wheezing.
Wheezing stops.
Sleep soundly.
Quick relief.
Nights of restful sleep and days of greater comfort.
Sleep is restful.
Without dangerous drugs.
Attacks curbed or completely ended.
A sensational new European discovery.

Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondents' said preparation and its efficacy in the treatment of the ailment or condition commonly referred to as asthma and the symptoms and manifestations thereof, respondents represent and imply that said preparation will cure, or be of substantial therapeutic benefit in the treatment of asthma and the symptoms and manifestations thereof, and that said preparation is a new sensational European discovery, free from harmful drugs, and may be used promiscuously without harmful effects.

Respondents further represent that the use of said preparation has "freed" thousands from asthma; that its use will benefit all sufferers from asthma, assuring nights of restful sleep and days of greater comfort; and that it will stop "wheezing" and other symptoms and manifestations of asthma.

PAR. 5. The foregoing representations and implications used and disseminated by the respondents as above described are grossly exag-

gerated, misleading and untrue and constitute false advertisements. In truth and in fact, respondents' said preparation is not a cure for asthma nor is it of substantial therapeutic benefit in the treatment of asthma or the symptoms and manifestations thereof. The preparation is neither new nor sensational, as the only ingredient therein which is of any value to a sufferer from asthma is ephedrine, which has long been used by the medical profession, in some cases, to afford temporary relief from some symptoms or manifestations of asthma, but which is not used or recognized as a cure for asthma or the symptoms or manifestations thereof.

The preparation cannot be used without harmful effects by all sufferers from asthma, for the principal active ingredient therein, ephedrine, is not safe for use by persons with heart or kidney ailments, except in limited quantities and under competent medical supervision. The unlimited and unsupervised use of the preparation by such persons may result in injury.

The preparation has not "freed" thousands or any other substantial number of persons from asthma. It will not benefit all sufferers from asthma, nor does it assure the user of nights of restful sleep or days of greater comfort, and it will not stop "wheezing" or other symptoms or manifestations of asthma.

The only benefit that a sufferer from asthma could receive from the use of said preparation is temporary relief from some of the manifestations of asthma.

PAR. 6. The above and foregoing representations and implications used by respondents as to the therapeutic value and effect of their said preparation, in the course of their advertising, offering for sale, and sale of their said preparation in said commerce as aforesaid, have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said preparation is a cure for, or of therapeutic benefit in the treatment of, asthma or the symptoms and manifestations thereof, and that the other representations and implications as hereinabove set out are true and have had, and do have, the capacity and tendency to, and do, induce the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation, thereby unfairly diverting trade in said commerce to the respondents from those of their competitors who do not misrepresent the efficacy and therapeutic value of their said products. Thereby substantial injury is done to said competitors in 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 respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, The Perasthman Co., Inc., and E. Fougera & Co., Inc., corporations, their officers, agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mail or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the medicinal preparation, containing drugs, now designated "Perasthman" and "Perasthman Tablets," or any other medicinal preparation composed of substantially similar ingredients, or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said preparation is a cure for asthma or is an effective treatment for asthma or the symptoms thereof, or that said preparation has any therapeutic value in the treatment of asthma other than affording, in some cases, temporary relief from some of the symptoms of asthma; that said preparation is new or sensational or that the use thereof is beneficial to all sufferers from asthma; that said preparation is harmless or that the use thereof will assure suf-

ferers from asthma, nights of restful sleep or days of greater comfort or will stop wheezing or other symptoms of asthma; or which advertisements fail to reveal that said preparation is not safe if used in self-medication by members of the lay public suffering from heart or kidney ailments.

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.

IN THE MATTER OF

EDWARD L. JENKINS AND MILDRED JENKINS, TRADING AS ANTISEPTO PRODUCTS COMPANY, ANTISEPTO PRODUCTS, EDUCATIONAL PRODUCTS COMPANY, SANITOL PRODUCTS COMPANY, XL PRODUCTS COMPANY AND XL PRODUCTS

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

Docket 3867. Complaint, Aug. 7, 1939—Decision, Nov. 7, 1939

Where two individuals engaged in sale and distribution of certain medicinal preparations for women, and of a certain so-called gland medicine for men, to purchasers in other States and in the District of Columbia; in advertisements which they disseminated through the mails, through insertions in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributing in commerce among the various States, and which included quotations, or purported quotations from testimonials, and were intended and likely to induce purchase of their said preparations—

(*a*) Represented that their said medicinal products, known and designated as "Guaranteed Antisepto Anti-Delay Compound Regular" and "Guaranteed Antisepto Anti-Delay Compound Super Strength," were cures or remedies for delayed menstruation and competent and effective treatments therefor, and would accomplish the desired results without delay;

Facts being said preparations were not cures or remedies for said condition and did not constitute competent or effective treatments therefor, would not accomplish the results claimed for them as aforesaid, and were not safe and harmless, but contained aloes, extract cotton root bark, extract black hellebore, oil of savin, and extract ergot, in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual;

(*b*) Represented that their said medicinal preparations known and designated as "Guaranteed Prosaid Gland Medicine Double XX" and "Guaranteed Prosaid Gland Medicine Triple XXX" were cures or remedies for prostate gland weakness and competent and effective treatments therefor, and would restore the prostate gland to normal activity;

Facts being said "Double XX" preparation sold and distributed was not a cure or remedy for said conditions, did not constitute competent or effective treatment therefor, and would not accomplish results claimed or restore the gland to normal activity, and was not safe and harmless, in that it contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and said "Triple XXX" medicine was likewise neither cure nor remedy for such weakness nor competent or effective treatment therefor, and would not accomplish results claimed or restore such gland to normal activity, and

was not safe and harmless in that it contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual; and

(c) Failed to reveal, in advertisements disseminated as aforesaid, that use of preparations in question under conditions prescribed therein, or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of such public, because of such belief, to purchase its said medicinal preparations with injurious drugs therein contained:

Held, That such acts and practices, under the conditions set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Edward L. Jenkins and Mildred Jenkins, individuals, trading as Antisepto Products Co., Antisepto Products, Educational Products Co., Sanitol Products Co., XL Products Co., and XL Products, hereinafter referred to as respondents, have violated the provisions of the 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, Edward L. Jenkins and Mildred Jenkins, are individuals trading as Antisepto Products Co., Antisepto Products, Educational Products Co., Sanitol Products Co., XL Products Co., and XL Products, with their office and principal place of business at 3335 Belle Plaine Avenue, Chicago, Ill., from which address said respondents transact business under the above trade names.

Par. 2. The respondents are now, and for more than 1 year last past have been engaged in the sale and distribution of certain medicinal preparations known as Guaranteed Antisepto Anti-Delay Compound Regular, Guaranteed Antisepto Anti-Delay Compound Super Strength, Guaranteed Prosaid Gland Medicine Double XX and Guaranteed Prosaid Gland Medicine Triple XXX. In the course and conduct of their business the respondents cause said medicinal preparations when sold to be transported from their place of business in the State of Illinois to the purchasers thereof located in other

States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said medicinal preparations 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 the aforesaid business, the respondents have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said medicinal preparations by United States mails, by insertions in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said medicinal preparations, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisement disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN!
DELAYED?

MRS. G. B. SAYS:—
Has never failed me yet.
MRS. W. S. SAYS:—
A blessing to married women.

If you worry because of overdue discouraging, unnatural or suppressed periods—if you have tried everything with no results—why not try Guaranteed Antisepto Anti-Delay Compound? Try this wonderful treatment for a period of 3 days and if you do not receive the desired results—return the unused compound and your money is cheerfully refunded. REGULAR $2.00—SUPER STRENGTH $3.50. If C. O. D. postage extra. Don't wait. Mail your order today—sure.

Even long overdue cases often started in 3 days

ANTISEPTO PRODUCTS, 3335 Belle Plaine Ave.,
Dept. P-11, Chicago, Ill.

GLAND-WEAKNESS
Test At Our Risk!

Men now can help nature to restore the prostrate to normal activity with our Guaranteed Prosaid Gland Medicine. When Bodily Debility is shown thru

gland weakness, and you begin to feel 'old and worn out', then immediately give nature this potent assistance.

From S. T. Miss.,

One box did me so much good.

Double XX, $1. Triple XXX, $2. C. O. D. postage extra. If not satisfied after using 3 days return the unused portion and receive your refund. Send for PROSAID at once, to

X-L PRODUCTS,
3335 Belle Plaine, Dept. N-21, Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out, the respondents represent that their medicinal preparations known and designated as Guaranteed Antisepto Anti-Delay Compound Regular and Guaranteed Antisepto Anti-Delay Compound Super Strength are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without delay.

Said respondents also represent, as hereinabove set forth and by other representations similar thereto not specifically set out herein, that their medicinal preparations known and designated as Guaranteed Prosaid Gland Medicine Double XX and Guaranteed Prosaid Gland Medicine Triple XXX are cures or remedies for prostate gland weakness and competent and effective treatments therefor, and that said preparations will restore the prostate gland to normal activity.

PAR. 5. In truth, and in fact the medicinal preparations sold and distributed by the respondents as aforesaid known as Guaranteed Antisepto Anti-Delay Compound Regular and Guaranteed Antisepto Anti-Delay Compound Super Strength are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Said preparations will not accomplish the results claimed for them by the respondents. Furthermore, said preparations are not safe and harmless in that said preparations contain aloes, extract cotton root bark, extract black hellebore, oil of savin, and extract ergot.

The aforesaid drugs are present in said medicinal preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Such use of said medicinal preparations may result in gastrointestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine

infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects on the human system and tending to cause abortion in some instances and may result in severe toxic conditions, such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondents as aforesaid, known as Guaranteed Prosaid Gland Medicine Double XX, is not a cure or remedy for prostate gland weakness and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondents and will not restore the prostate gland to normal activity. Furthermore, said preparation is not safe and harmless in that said preparation contains powdered extract of hyoscyamus and yohimbine hydrochloride.

The aforesaid drugs are present in said medicinal preparation in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in the advertisement or under such conditions as are customary or usual, and may result in hyoscyamus poisoning, producing delirium, headaches, and brain disorders in those individuals susceptible thereto, and may cause irritation and injury to the urinary tract and serious nephritis may be one of the after effects.

PAR. 7. The said medicinal preparation sold and distributed by the respondents as aforesaid, known as Guaranteed Prosaid Gland Medicine Triple XXX, is not a cure or remedy for prostate gland weakness and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by respondents and will not restore the prostate gland to normal activity. Furthermore, said preparation is not safe and harmless in that said preparation contains chromium sulphate and powdered extract of pichi.

The aforesaid drugs are present in said medicinal preparation in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and may result in an irritation of the genitourinary tract and might cause damage to the kidneys and other structures when inflammatory conditions exist.

PAR. 8. In addition to the representations hereinabove set forth, the respondents are also engaged in the dissemination of false ad-

vertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparations, disseminated as aforesaid, 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 and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations containing injurious drugs.

PAR. 10. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 7, 1939, issued and on August 9, 1939, served its complaint in this proceeding upon the respondents, Edward L. Jenkins, and Mildred Jenkins, individuals, trading as Antisepto Products Co., Antisepto Products, Educational Products Co., Sanitol Products Co., XL Products Co., and XL Products, charging them with the use of unfair and deceptive acts and practices 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 fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, 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, 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. Respondents, Edward L. Jenkins and Mildred Jenkins, are individuals trading as Antisepto Products Co., Antisepto Products, Educational Products Co., Sanitol Products Co., XL Products Co., and XL Products, with their office and principal place of business at 3335 Belle Plaine Avenue, Chicago, Ill., from which address said respondents transact business under the above trade names.

PAR. 2. The respondents are now, and for more than 1 year last past have been engaged in the sale and distribution of certain medicinal preparations known as Guaranteed Antisepto Anti-Delay Compound Regular, Guaranteed Antisepto Anti-Delay Compound Super Strength, Guaranteed Prosaid Gland Medicine Double XX and Guaranteed Prosaid Gland Medicine Triple XXX. In the course and conduct of their business the respondents cause said medicinal preparations when sold to be transported from their place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said medicinal preparations 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 the aforesaid business, the respondents have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said medicinal preparations by United States mails, by insertions in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations; and have disseminated, and are now disseminating and have caused, and are now causing, the dissemination of false advertisements concerning their said medicinal preparations, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false representations contained

in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN!
DELAYED?
MRS. G. B. SAYS:—
Has never failed me yet.
MRS. W. S. SAYS:—
A blessing to married women.

If you worry because of overdue, discouraging unnatural or suppressed periods—if you have tried everything with no results—why not try Guaranteed Antisepto Anti-Delay Compound? Try this wonderful treatment for a period of 3 days and if you do not receive the desired results—return the unused compound and your money is cheerfully refunded. Regular $2.00—SUPER STRENGTH $3.50. If C. O. D. postage extra. Don't wait. Mail your order today—sure.

Even long overdue cases often started in 3 days
ANTISEPTO PRODUCTS, 3335 Belle Plaine Ave.,
Dept. P-11, Chicago, Ill.

GLAND-WEAKNESS
Test At our Risk!

Men now can help nature to restore the prostate to normal activity with our Guaranteed Prosaid Gland Medicine. When Bodily Debility is shown thru gland weakness, and you begin to feel 'old and worn out' then immediately give nature this potent assistance.

From S. T. Miss.,
One box did me so much good.

Double XX, $1. Triple XXX, $2. C. O. D. postage extra. If not satisfied after using 3 days return the unused portion and receive your refund. Send for PROSAID at once, to

X-L PRODUCTS, 3335 Belle Plaine, Dept. N-21, Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out, the respondents represent that their medicinal preparations known and designated as Guaranteed Antosepto Anti-Delay Compound Regular and Guaranteed Antosepto Anti-Delay Compound Super Strength are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without delay.

Said respondents also represent, as hereinabove set forth and by other representations similar thereto not specifically set out herein, that their medicinal preparations known and designated as Guaranteed Prosaid Gland Medicine Double XX and Guaranteed Prosaid Gland Medicine Triple XXX are cures or remedies for prostate gland weakness and competent and effective treatments therefor, and that said preparations will restore the prostate gland to normal activity.

PAR. 5. In truth and in fact the medicinal preparations sold and distributed by the respondents as aforesaid known as Guaranteed Antisepto Anti-Delay Compound Regular and Guaranteed Antisepto Anti-Delay Compound Super Strength are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Said preparations will not accomplish the results claimed for them by the respondents. Furthermore, said preparations are not safe and harmless in that said preparations contain aloes, extract cotton root bark, extract black hellebore, oil of savin, and extract ergot.

The aforesaid drugs are present in said medicinal preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Such use of said medicinal preparations may result in gastrointestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects on the human system and tending to cause abortion in some instances and may result in severe toxic conditions, such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondents as aforesaid, known as Guaranteed Prosaid Gland Medicine Double XX, is not a cure or remedy for prostate gland weakness and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondents and will not restore the prostate gland to normal activity. Furthermore, said preparation is not safe and harmless in that said preparation contains powdered extract of hyoscyamus and yohimbine hydrochloride.

The aforesaid drugs are present in said medicinal preparation in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in the advertisement or under such conditions as are customary or usual, and may result in hyoscyamus poisoning, producing delirium, headaches, and brain dis-

orders in those individuals susceptible thereto, and may cause irritation and injury to the urinary tract and serious nephritis may be one of the after effects.

PAR. 7. The said medicinal preparation sold and distributed by the respondent as aforesaid, known as Guaranteed Prosaid Gland Medicine Triple XXX, is not a cure or remedy for prostate gland weakness and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by respondents and will not restore the prostate gland to normal activity. Furthermore, said preparation is not safe and harmless in that said preparation contains chromium sulphate and powdered extract of pichi.

The aforesaid drugs are present in said medicinal preparation in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and may result in an irritation of the genitourinary tract and might cause damage to the kidneys and other structures when inflammatory conditions exist.

PAR. 8. In addition to the representations hereinabove set forth, the respondents are also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparations, disseminated as aforesaid, 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 and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, Edward L. Jenkins and Mildred Jenkins, individuals, trading as Antisepto Products Co., Antisepto Products, Educational Products Co., Sanitol Products Co., XL Products Co., and XL Products, or trading under any other name or names, their agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations known as Guaranteed Antisepto Anti-Delay Compound Regular, Guaranteed Antisepto Anti-Delay Compound Super Strength, Guaranteed Prosaid Gland Medicine Double XX and Guaranteed Prosaid Gland Medicine Triple XXX, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisements represent, directly or through implication:

1. That the use of said preparations known as Guaranteed Antisepto Anti-Delay Compound Regular or Guaranteed Antisepto Anti-Delay Compound Super Strength, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, is a competent, safe or scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertise-

ments fail to reveal that the use of such preparations may result in serious and irreparable injury to the health of the user.

2. That the use of said preparations known as Guaranteed Prosaid Gland Medicine Double XX or Guaranteed Prosaid Gland Medicine Triple XXX, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, is a cure or remedy for, or has any therapeutic value in the treatment of, prostate gland weakness or inactivity, or which advertisements fail to reveal that the use of such preparations may result in serious and irreparable injury to the health of the user.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order, and if so, the manner and form in which they intend to comply; and that, within 60 days after the service upon them of this order, said respondents shall 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

MARLIN FIREARMS COMPANY

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

Docket 3871. Complaint, Aug. 17, 1939—Decision, Nov. 7, 1939

Where a corporation engaged, under corporate name long associated with manufacture of high quality firearms, in sale and distribution of razor blades and other products—

Represented, directly and indirectly, through such statements as "* * * Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * * made with the same care that has made Marlin guns tops in quality for 67 years," "Marlin, world-famous firearms manufacturer, has found a way to produce a truly fine razor blade * * *," etc., that such so-called "Marlin" blades were made by it and manufacturer of "Marlin" firearms, facts being products in question, sold by it under its trade-mark and designated by it as aforesaid, were made by another company whose output in part it purchased, and it did not own or control manufacturing plant in which such blades were manufactured;

With effect of misleading and deceiving substantial portion of purchasing public, on the part of which, as of consuming public and dealers, there had long been preference for dealing direct with manufacturer as thereby securing lower prices, elimination of middlemen's profits, superior products and other advantages, and also on the part of which there would be preference for blades manufactured by such firearms manufacturer as supposedly better equipped, by reason of its reputation, to make high-grade product, into erroneous and mistaken belief that such statements, representations and advertisements were true, and that said blades were made by it, and into purchase thereof because of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Edward J. Brennan, of New Haven, Conn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Marlin Firearms Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Marlin Firearms Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in New Haven, Conn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of razor blades and other products. In the course of its business the respondent causes said razor blades to be transported from its principal place of business in the State of Connecticut to purchasers thereof at their respective points of location in various States of the United States other than the State of Connecticut and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said razor blades sold by respondent 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 has published or caused to be published in newspapers and periodicals, having a general circulation, among and between various States of the United States, advertisements containing the following statements and representations and others similar thereto:

Here is a new, high-speed, luxury razor blade made of the finest surgical steel by craftsmen with years of experience. Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * *. It's not hard to understand why Marlin is one of the finest blades in the world. They are made with the same care that has made Marlin guns tops in quality for 67 years.

Marlin, world-famous firearms manufacturer has found a way to produce a truly fine razor blade * * *. These blades are hardened, ground and honed scientifically by craftsmen with a true knowledge of fine steel.

Made by the Marlin Firearms Company, makers of fine fire-arms for 65 years.

Made of finest Swedish surgical steel and guaranteed by the makers of the famous Marlin guns.

Through the use of the statements hereinabove set forth, and others of similar import or meaning not specifically hereinabove set forth, respondent has represented and does now represent, directly and indirectly, that it is the manufacturer of razor blades and that the aforesaid blades designated by respondent as "Marlin" blades are manufactured by the respondent, the manufacturer of "Marlin" firearms.

PAR. 4. In truth and in fact respondent does not make or manufacture razor blades, and the aforesaid blades sold by respondent under its trade-mark and represented as "Marlin" blades are manufactured by another company, whose output, in part, is purchased by respondent. Respondent does not own or control the manufacturing plant in which the aforesaid blades are manufactured.

PAR. 5. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with a manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained. Furthermore, the name "Marlin" has long been associated with the manufacture of high quality firearms and there would be a preference on the part of a substantial portion of the purchasing public for razor blades manufactured by the Marlin Firearms Co. in the belief that the company, by reason of its reputation, is better equipped to manufacture a high grade product.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to its razor blades 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 and mistaken belief that such false statements, representations and advertisements are true, and that such razor blades are manufactured by respondent, and into the purchase of said razor blades because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 17, 1939, issued and served its complaint in this proceeding upon the respondent, Marlin Firearms Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts 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 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. Marlin Firearms Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in New Haven, Conn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of razor blades and other products. In the course of its business the respondent causes said razor blades to be transported from its principal place of business in the State of Connecticut to purchasers thereof at their respective points of location in various States of the United States other than the State of Connecticut and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said razor blades sold by respondent 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 has published or caused to be published in newspapers and periodicals, having a general circulation, among and between various States of the United States, advertisements containing the following statements and representations and others similar thereto:

Here is a new, high-speed, luxury razor blade made of the finest surgical steel by craftsmen with years of experience. Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * * It's not hard to understand why Marlin is one of the finest blades in the world. They are made with the same care that has made Marlin guns tops in quality for 67 years.

Marlin, world-famous firearms manufacturer has found a way to produce a truly fine razor blade * * *. These blades are hardened, ground and honed scientifically by craftsmen with a true knowledge of fine steel.

Made of finest Swedish surgical steel and guaranteed by the makers of the famous Marlin guns.

Through the use of the statements hereinabove set out, and others of similar import or meaning not specifically hereinabove set forth, respondent has represented and does now represent, directly and indirectly, that it is the manufacturer of razor blades and that the aforesaid blades designated by respondent as "Marlin" blades are manufactured by the respondent, the manufacturer of "Marlin" firearms.

PAR. 4. In truth and in fact respondent does not make or manufacture razor blades, and the aforesaid blades sold by respondent under its trade-mark and represented as "Marlin" blades are manufactured by another company, whose output, in part, is purchased by respondent. Respondent does not own or control the manufacturing plant in which the aforesaid blades are manufactured.

PAR. 5. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with a manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained. Furthermore, the name "Marlin" has long been associated with the manufacture of high quality firearms and there would be a preference on the part of a substantial portion of the purchasing public for razor blades manufactured by the Marlin Firearms Co. in the belief that the company, by reason of its reputation, is better equipped to manufacture a high grade product.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to razor blades sold by it 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 and mistaken belief that such statements, representations, and advertisements are true, and that such razor blades are manufactured by respondent, and into the purchase of said razor blades because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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 Marlin Firearms Co., a corporation, its officers, agents, and representatives, in connection with the sale and distribution of razor blades in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that Marlin Firearms Co. is the manufacturer of the razor blades which it sells, unless and until it owns and operates, or directly and absolutely controls, the factory wherein said razor blades are manufactured.

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

THE AMERICAN PRODUCTS COMPANY AND THE ZANOL 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 2836. Complaint, June 8, 1936—Decision, Nov. 8, 1939

Where a corporation engaged in manufacture and sale of numerous food and toilet products and household cleaners, and its corporate subsidiary which it caused to sell its said products to retail vendors for resale to purchasing public and which, in acts below set forth, acted at all times under its domination, supervision, and direction, engaged, as aforesaid, in sale of such products to purchasers in various other States and in the District of Columbia, in competition with others likewise engaged in sale and distribution and transportation of similar commodities, and including those who, in advertising potential earning possibility of salesmen and representatives, do not falsely represent potential profit to be realized by such persons as far in excess of that actually possible; in advertising, through said subsidiary, in various daily newspapers, trade magazines, and other periodicals of interstate circulation, and through circulars and letters forwarded to prospective or potential representatives throughout the various States, to induce persons contacted to agree to represent said subsidiary in sale of their products throughout the various States—

(*a*) Misrepresented, through said subsidiary, volume of their business, and represented that salesmen or distributors incurred no risk or expense, through such statements as " * * * When I tell you that my business has grown from nothing to a five-million-dollar-a-year business, you can see for yourself how successful my ideas have been" and "I Start You at My Risk," "Best of all I am going to start you in this wonderful business at my expense * * * I am going to assume all the expense and take all the risk," facts being claim of annual turnover of inventory was excessive and exorbitant and statement that so-called representatives would be given contract at sole risk and expense of such corporation was misleading, in that deposit was required by them for goods or samples supplied;

(*b*) Represented that it gave "A Ford Sedan Free," through statements to such effect and "I will pay you up to $42.50 a week and I will furnish a car to producers," and "Free Auto If You Qualify" or "Automobile Given to Producers," facts being Ford sedan stated as given free to representatives was only given when they had purchased from corporation in question, within 12-month period and at wholesale prices, not less than $2,500 worth of goods; and

(*c*) Represented that large earnings were to be gained by those contracting with it, through advertisements in trade magazines, newspapers, and other periodicals of interstate circulation, making such statements as "Agents Six Dollars a Day. Wonderful chance to make $6 a day taking orders * * *," "Man—I want a man for local tea and coffee routes paying up to $32.50 first week. Opportunity for steady cash increases. * * *," "*$80 in One Week.* * * * 62 years old * * * reported he made better than $80 in

a week on his route and I think that is fine for a man his age," "Got Ford in Six and One-Half Months," etc., "*Women $50 a Week* * * * reported that her profits in a day ran around $15 to $25. * * * could only work about two days out of every week. * * * never let her weekly profits run below $50 * * * Where can a woman find a salaried job paying that well?", etc., facts being average earnings of its salesmen and representatives, under normal conditions, were but small percentage of amounts represented as aforesaid;

With effect of misleading and deceiving potential representatives and salesmen into false belief that earnings to be achieved by vending their wares and commodities as above set forth were far in excess of those which it was actually possible thus to obtain, and that volume of business and scope of their operations were far greater than was actually the case, and with capacity and tendency to cause substantial injury to competition through attracting to themselves, as a result of such advertisements, employees of competitors or potential competitors, and with result that through such advertisements they were able to maintain large staff of representatives, agents, and employees, with resulting unfair diversion, through medium of such staff and volume of sales maintained by them, of trade to themselves from competitors:

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

Before *Mr. Edward E. Reardon* and *Mr. Randolph Preston*, trial examiners.

Mr. Alden S. Bradley and *Mr. M. C. Pearce* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, and *Mr. J. M. George*, of Winona, Minn., for respondents.

Complaint

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that American Products Co., a corporation, and Zanol Products Co., 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, American Products Co., is a Delaware corporation, having its principal office and place of business at 3265 Colerain Avenue, Cincinnati, Ohio.

Respondent, Zanol Products Co., is an Ohio corporation, having its principal office and place of business at 3265 Colerain Avenue, Cin-

cinnati, Ohio, and is a subsidiary of respondent, American Products Company.

PAR. 2. Respondent, American Products Co., for approximately 4 years last past has been engaged in the manufacture and sale of numerous food and toilet products and household cleaners, and has sold and caused its subsidiary, Zanol Products Co., to sell the same products for such period, to retail vendors, consumers and other members of the purchasing public. In pursuance of such sales, both respondents have transported and caused to be transported, such commodities into the various States of the United States, other than the States of Delaware and of Ohio, and into the District of Columbia, and have maintained a constant current of trade and commerce in said commodities so listed in commerce among and between the various States of the United States.

PAR. 3. In the doing of the acts herein related, Zanol Products Co. was at all times under the domination, supervision, and direction of American Products Co., through its agents, officers, and representatives.

PAR. 4. In the course and conduct of the business aforesaid, respondents, and each of them, are now and have been engaged in competition with other corporations, firms, and individuals likewise engaged in the business of selling, distributing, and transporting throughout the various States of the United States and the District of Columbia, commodities similar in nature, character, and design to those vended by the respondents.

PAR. 5. Respondent, American Products Co., in the course and conduct of its business, advertises and causes to be advertised in various daily newspapers, trade magazines, and other periodicals having an interstate circulation, and has forwarded to prospective or potential representatives of the respondent throughout the various States of the United States and in the District of Columbia, circulars and letters for the purpose of inducing the persons so contacted to agree to represent the said respondent in the sale of its products throughout the various States. Among such statements and representations is the following:

I will pay you up to $42.50 a week and I will furnish a car to producers.

I SHARE MY PROFITS

This is the rock on which I have built my business and on which it has grown and prospered and brought money to thousands and thousands of men and women. When I tell you that my business has grown from nothing to a five million dollar a year business, you can see for yourself how successfully my ideas have been.

I START YOU AT MY RISK

Best of all I am going to start you in this wonderful business at my expense. I am going to put complete faith and confidence in you. I am going to assume all the expense and take all of the risk.

Respondent further represents in its advertising that it gives

A FORD SEDAN FREE

and issues numerous other statements of like tenor and effect to those above stated, intended and calculated by said respondent to secure representatives or salesmen by inducing them to believe that enormous earnings are to be gained by contracting with the respondent.

PAR. 6. In truth and in fact, the representations hereinabove set forth are false and misleading. The so-called representatives procured in response to such advertising are in truth and fact retailers and no car is furnished to them, save as a subsequent bonus as hereafter related. The claim of annual turn-over of inventory is excessive and exorbitant. The statement that a so-called representative would begin a contract at the sole risk and expense of the respondent is false and misleading in that a deposit is required upon the goods or samples supplied, which deposit is equal to or virtually equal to the actual cost value of the same. The Ford Sedan stated to be given free to "representatives" is only given when such representative or representatives shall have purchased from the respondent at wholesale prices within a period of 12 months, not less than $2,500 worth of goods.

PAR. 7. Respondent, Zanol Products Co., in the course and conduct of its business as sales subsidiary of respondent, American Products Co., and in its own corporate entity, in its endeavor to secure the services of agents, representatives, or salesmen, has advertised, and caused to be advertised in trade magazines, newspapers, and other periodicals having an interstate circulation, statements of the following nature and to the following effect:

AGENTS $6 A DAY

Wonderful chance to make $6 a day taking orders for No-Frost.

Man—I want a man for local tea & coffee route paying up to $27.50 first week. Opportunity for steady cash increases. Approx. 200 customers. Everything furnished including capital. Apply 9 to 11 mornings. 118 W. Pico, near Broadway. (Los Angeles Examiner, Sunday, November 17, 1935.)

Men (2) at once, for est. grocery routes, paying up to $27.50 per week. No experience or capital, but you must have refs. Free auto if you qualify. Apply between 9:30 & 11 a. m. 118 W. Pico near Broadway. (Los Angeles Examiner, Saturday, December 14, 1935.)

Man—I Want a Man For Local tea & coffee route, paying up to $32.50 first week, opportunity for steady cash increases, approx. 150 customers, everything

furnished, including capital. Apply between 9:30 and 11 Monday, A. M. 118 W. Pico, near Broadway. (Los Angeles Examiner, Sunday, December 15, 1935.)

$80 in One Week. One dealer I have in mind is a man up in New York State. His name is Wm. Newcomb, 62 years old. Now you know that a man this age couldn't carry on the business unless it was light, pleasant and agreeable. Anyway, Newcomb reported he made better than $80 in a week on his route, and I think that is fine for a man his age.

Got Ford in 6½ Months. Hans Coordes, another good, steady-working Dealer, made good in a big way. When he started a Zanol Route he didn't have a penny. But in only 6½ months he was "boss" in a going business of his own—had $1,200.00 in savings. I gave him a brand-new Ford Tudor Sedan as a bonus, in addition to his regular cash earnings. Every cent he made was profit from his Zanol business. He said that some days he made as high as $20.

Woman Made $50 a Week. And now let me tell you that women, too, can make plenty of money with this wonderful proposition. Let me tell you about Mrs. Carrie McCalmant, of Nebraska. She reported that her profits in a day ran around $15 to $25. As she had two small children and her husband was not well, she could only work about two days out of every week. However, she said she never let her weekly profits run below $50. Where can a woman find a salaried job paying that well? (Mills Exhibit No. 2)

Free Auto If You Qualify,

Automobile Given to Producers,

Automobile Given Man Who Qualifies.

Five Million a Year. These ideals are the rock on which I built my business and on which it has grown and prospered and brought money to hundreds and hundreds of men and women. When I tell you that I started with practically nothing, and that now housewives buy five million dollars worth of Zanol Products annually, you know how successful my ideas have been.

and other statements of like tenor and effect, intended and calculated by said respondent to repreesnt to potential representatives enormous earnings to be gained by contracting with the respondent; and to induce the person so contacted to contract with the said respondent for the purpose of vending its goods.

PAR. 8. In truth and in fact, the average earnings of the salesmen, representatives, or agents of either of the respondents under normal conditions is but a small percentage of the amount as represented by such statements, and under normal circumstances and conditions, consistent earnings in the due course of business in the amounts as represented by the advertisements were and are impossible.

PAR. 9. The aforesaid acts and practices of the respondents, and each of them, in the manner above detailed, have a tendency and capacity to, and do mislead and deceive potential representatives, salesmen, or employees into the false beliefs that the earnings to be achieved by vending the wares and commodities of the respondents as herein described are far in excess of the earnings which it is actually possible to obtain by so doing; and that the volume of

business and scope of operations of the respondents are far greater than they actually are.

PAR. 10. There are among the competitors of the respondents other persons, firms, corporations, and copartnerships engaged in the business of selling and distributing in interstate commerce merchandise and commodities similar to those vended by the respondents, who advertise and cause to be advertised statements reflecting the potential earning possibilities of salesmen, representatives, or employees for the purpose of securing the services of such employees, agents, or representatives, but who do not falsely represent in such advertisements the potential profit to be realized by such salesmen, representatives, or employees to be far in excess of the profit actually possible.

PAR. 11. The acts and practices of the respondents as aforesaid have a capacity and tendency to and in fact do cause substantial injury to competition of respondents in interstate commerce by attracting to the respondents as a result of the advertisements hereinabove set forth, employees of competitors or potential employees of competitors. Because of the advertisements hereinabove set forth, respondents have been able to maintain a large staff of representatives, agents, or employees, and through the medium of such staff and the volume of sales maintained by it have unfairly diverted trade to the respondents from competitors of respondents in interstate commerce.

PAR. 12. The above acts and things done and caused to be done by respondents are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 8, 1936, issued, and on June 12, 1936, served its complaint in this proceeding upon respondents, The American Products Co., a corporation, and The Zanol Products Co., a corporation charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents filed separate answers denying certain allegations of the complaint. Subsequently, by order entered herein, the Commission granted respond-

ents' request for permission to withdraw such answers and to file in lieu thereof a substitute joint answer in which the respondents admitted all of the material allegations of the complaint, which joint 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 joint 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 The American Products Co. is a Delaware corporation, having its principal office and place of business at 3265 Colerain Avenue, Cincinnati, Ohio, and its statutory office at Wilmington, Delaware. Respondent The Zanol Products Co. is an Ohio corporation, having its principal office and place of business at 3265 Colerain Avenue, Cincinnati, Ohio, and is a subsidiary of respondent The American Products Co.

PAR. 2. Respondent The American Products Co. for approximately 8 years last past has been engaged in the manufacture and sale of numerous food and toilet products and household cleaners, and has caused its subsidiary, The Zanol Products Co., to sell said products to retail vendor for resale to the purchasing public. Respondents have transported or caused to be transported such commodities into the various States of the United States other than the States of Delaware and Ohio, and into the District of Columbia, and have maintained a constant current of trade and commerce in said commodities so listed in commerce among and between the various States of the United States.

PAR. 3. In the doing of the acts herein related, The Zanol Products Co. was at all times under the domination, supervision and direction of The American Products Co., through its agents, officers, and representatives.

PAR. 4. In the course and conduct of their aforesaid business, respondents are now, and have been, engaged in competition with other corporations, firms, and individuals likewise engaged in the business of selling, distributing, and transporting throughout the various States of the United States and the District of Columbia, commodities similar in nature, character, and design to those vended by the respondents.

PAR. 5. Respondent The Zanol Products Co., in the course and conduct of its business, and at the direction of respondent The Amer-

ican Products Co., advertises and causes to be advertised in various daily newspapers, trade magazines, and other periodicals having an interstate circulation, and has forwarded to prospective or potential representatives throughout the various States of the United States and in the District of Columbia, circulars and letters for the purpose of inducing the persons so contacted to agree to represent the said respondent in the sale of respondents' products throughout the various states. Among such statements and representations are the following:

I will pay you up to $42.50 a week and I will furnish a car to producers.

I SHARE MY PROFITS

This is the rock on which I have built my business, and on which it has grown and prospered and brought money to thousands and thousands of men and women. When I tell you that my business has grown from nothing to a five million dollar a year business, you can see for yourself how successful my ideas have been.

I START YOU AT MY RISK

Best of all I am going to start you in this wonderful business at my expense. I am going to put complete faith and confidence in you. I am going to assume all the expense and take all the risk.

Respondent further represents in its advertising that it gives

A FORD SEDAN FREE

and issues numerous other statements of like tenor and effect to those above stated, intended and calculated by said respondent to secure representatives or salesmen by inducing them to believe that large earnings are to be gained by contracting with the respondent.

PAR. 6. In truth and in fact the representations hereinabove set forth are false and misleading. The so-called representatives procured in response to such advertising are in truth and in fact retailers, and no car is furnished to them, save as a subsequent bonus as hereinafter related. The claim of annual turnover of inventory is excessive and exorbitant. The statement that a so-called representative would be given a contract at the sole risk and expense of the respondents is misleading, in that a deposit is required by respondents for the goods or samples supplied.

The Ford Sedan stated to be given free to "representatives" is only given when such representative or representatives shall have purchased from the respondent, at wholesale prices, within a period of 12 months not less than $2,500 worth of goods.

PAR. 7. Respondent The Zanol Products Co., in the course and conduct of its business as sales subsidiary of respondent The American Products Co., and in its own corporate entity, in its endeavor to secure the services of representatives or salesmen has

advertised and caused to be advertised, in trade magazines, newspapers, and other periodicals having an interstate circulation, statements of the following nature and to the following effect.

AGENTS SIX DOLLARS A DAY

Wonderful chance to make $6 a day taking orders for No-Frost.

Man—I want a man for local tea and coffee route paying up to $27.50 first week. Opportunity for steady cash increases. Approximately 200 customers. Everything furnished, including capital. Apply 9 to 11 mornings, 118 W. Pico, near Broadway. (Los Angeles Examiner, Sunday, November 17, 1935)

Men—(2) at once for est. grocery routes, paying up to $27.50 per week. No experience or capital, but you must have reference. Free auto if you qualify. Apply between 9:30 and 11 a. m., 118 West Pico, near Broadway. (Los Angeles Examiner, Saturday, December 14, 1935)

Man—I want a man for local tea and coffee routes paying up to $32.50 first week. Opportunity for steady cash increases. Approximately 150 customers. Everything furnished, including capital. Apply between 9:30 and 11 Monday a. m., 118 West Pico, near Broadway. (Los Angeles Examiner, Sunday, December 15, 1935)

$80 in One Week. One dealer I have in mind is a man up in New York State. His name is William Newcomb, 62 years old. Now you know that a man this age could not carry on the business unless it was light, pleasant and agreeable. Any way, Newcomb reported he made better than $80 in a week on his route and I think that is fine for a man his age.

Got Ford in Six and One-Half Months. Hans Coordes, another good steady working dealer, made good in a big way, when he started a ZANOL route. He did not have a penny, but in only six and one-half months he was 'boss' in a good business of his own and had $1200 in savings. I gave him a brand new Ford Tudor Sedan as a bonus, in addition to his regular cash earnings. Every cent he made was profit from his ZANOL business. He said that some days he made as high as $20.

Women $50 a Week! And now let me tell you that women, too, can make plenty of money with this wonderful proposition. Let me tell you about Mrs. Carrie McCalmant, of Nebraska. She reported that her profits in a day ran around $15 to $25. As she had two small children and her husband was not well she could only work about two days out of every week. However, she said she never let her weekly profits run below $50. Where can a woman find a salaried job paying that well? (Mills Exhibit No. 2)

Free Auto If You Qualify.
Automobile Given to Producers.
Automobile Given to Man Who Qualifies.

Five Million a Year. These ideas are the rock on which I built my business and on which it has grown and prospered and brought money to hundreds and hundreds of men and women. When I tell you that I started with practically nothing and that now housewives buy five millions dollars worth of Zanol products annually you know how successful my ideas have been,

and other statements of like tenor and effect, intended and calculated by said respondent to represent to potential representatives large earnings to be gained by contracting with the respondent; and

to induce the person so contacted to contract with the said respondent for the purpose of vending its goods.

PAR. 8. In truth and in fact the average earnings of the salesmen and representatives of respondents under normal conditions are but a small percentage of the amount as represented by such statements.

PAR. 9. The aforesaid acts and practices of the respondents, and each of them, in the manner above detailed have a tendency and capacity to, and do, mislead and deceive potential representatives and salesmen into the false beliefs that the earnings to be achieved by vending the wares and commodities of the respondents, as herein described, are far in excess of the earnings which it is actually possible to obtain by so doing, and that the volume of business and scope of operations of respondents are far greater than they actually are.

PAR. 10. There are among the competitors of the respondents other persons, firms, corporations, and copartnerships engaged in the business of selling and distributing, in commerce among and between the various States of the United States merchandise and commodities similar to those vended by the respondents who advertise and cause to be advertised statements reflecting the potential earning possibilities of salesmen and representatives for the purpose of securing the services of such representatives and salesmen but who do not falsely represent in such advertisements the potential profit which can be realized by such salesmen or representatives to be far in excess of the profit actually possible.

PAR. 11. The acts and practices of the respondents, as aforesaid, have a capacity and tendency to cause substantial injury to competition of respondents in interstate commerce by attracting to the respondents as a result of the advertisements hereinabove set forth, employees of competitors or potential employees of competitors. Because of the advertisements hereinabove set forth, respondents have been able to maintain a large staff of representatives, agents or employees and through the medium of such staff, and the volume of sales maintained by them, have unfairly diverted trade to the respondents from competitors of respondents, in interstate commerce.

CONCLUSION

The acts and practices of respondents as herein found 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 complaint of the Commission and the answer of the respondents, in which answer respondents admit the material allegations of fact set forth in said complaint, and the Commission having made its findings as to the facts and conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The American Products Co., a corporation, and The Zanol Products Co., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of food and toilet products and household cleaners in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the volume of respondents' business.

2. Representing that salesmen or distributors of respondents' merchandise incur no risk or expense when in fact respondents require a deposit from such persons for the goods, samples or sales equipment supplied.

3. Using the term "free" or any other terms of similar import or meaning to describe or refer to articles offered as compensation for distributing respondents' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the term "free" or other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such articles or as to the services to be performed in connection with obtaining such articles.

4. Representing any specified sum of money as earnings or profits of any specified dealer or sales person for any stated period of time unless such sum of money has in fact been earned net, by such dealer or sales person, averaged over a period of at least 2 months in the ordinary course of business and under normal conditions and unless such representation is immediately accompanied by a statement to the effect that such a dealer or sales person is an exceptional or unusual dealer or sales person.

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

ABRAHAM STARR, TRADING AS SUPERIOR TEXTILE MILLS

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

Docket 3190. Complaint, July 27, 1937—Decision, Nov. 15, 1939

Where an individual engaged in sale and distribution of shirts and various articles of wearing apparel for men, through some 75 salesmen who sold said products to consumers in other States through house-to-house canvass, in substantial competition with others engaged in sale and distribution in commerce among the various States and in the District of Columbia of men's shirts, wearing apparel, and other articles of haberdashery, and including among competitors manufacturers and distributors of like and similar products who truthfully advertise and represent their business status and refrain from advertising or representing, through price lists and other advertisements, that they are an old-established house and own and operate mills or sell direct from mill to wearer when such is not the case; in advertising his commodities through price lists, advertisements and other printed matter published, issued, and circulated through the mails to his customers and prospective customers in the various States and in said District—

(*a*) Represented, through such statements as "Important Announcement To All Superior Representatives" describing or purporting to describe "Free Merchandise Sale" being conducted and to expire on the day therein named, that there were being offered "Four Shirts for the price of Three" and "Four Ties for the price of Three" and, similarly, other articles of apparel including undergarments, work shirts, pajamas, hose, and sweaters, facts being purchasers and prospective purchasers did not receive one article absolutely free when they purchased stated number of articles for advertised price, in that price purportedly charged for stated number also actually covered total sales price for entire number of articles;

(*b*) Represented, as aforesaid, that there was a time limitation within which purchasers or prospective purchasers might purchase aforementioned articles and receive, upon such purchase, one article absolutely free, facts being there was no such limitation within which they might buy haberdashery in question for purported special prices;

(*c*) Represented, through use of word "mills" in trade name employed by said individual, and through use of such words as "Direct from Mills to Wearer" and "We are manufacturers * * *," etc., that he was a manufacturer of the apparel sold by him and owned and operated textile mill selling direct from mill to wearer, facts being he was not such manufacturer, did not own, operate, or directly and absolutely control any such mill or sell direct as aforesaid; and

(*d*) Represented, through such statements, in aforesaid connection, as "Established 1905," etc., that his business dated from said year as above set forth, facts being it was not established until after 1925;

With tendency and capacity to mislead substantial part of purchasing public and of consuming public, on the part of which there has been long marked preference for products sold and distributed to public by manufacturer, by reason of prevailing economies and other advantages reflected in dealing direct with such manufacturers, and products of which are thus bought direct in substantial volume by public by reason of its general understanding of such economies and advantages and confidence placed in manufacturers of such products, by inducing said purchasing and consuming public erroneously and mistakenly to believe that various representations made by said individual, as above set out, were true, and with effect, through such false and misleading statements and representations, of inducing substantial number of consumer purchasers of such commodities to buy products offered, sold, and distributed by said individual on account of such erroneous and mistaken belief, and with result, as consequence, that trade was diverted to him from competitors engaged in similar businesses and hereinbefore referred to; to the substantial injury of competition in commerce:

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

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

Mr. S. Brogdyne Teu, II, for the Commission.

Herwood, Paris & Herwood, 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 Starr, an individual trading as Superior Textile Mills, 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, Abraham Starr, an individual trading as Superior Textile Mills, has his principal office and place of business located at 16–20 East Twelfth 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 shirts and other haberdashery direct to consumer purchasers. In the course and conduct of his 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 his 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 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 and in selling his products, and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised his commodities through the media of price lists, advertisements, and other printed matter, published, issued, and circulated through the United States mails, to his 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 him.

PAR. 4. The said price lists, advertisements, and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning his products. The following is representative of the representations made by respondent in his price lists, advertisements, and other advertising literature:

IMPORTANT ANNOUNCEMENT

TO ALL

SUPERIOR REPRESENTATIVES

October 10th will be the last day for the Free Merchandise Sale:

Four Shirts for the price of---------- Three
Four Ties for the price of---------- Three
Four Undergarments for price of---------- Three
Four Workshirts for price of---------- Three
Four Pair Pajamas for price of---------- Three
Seven Pair Hose for price of---------- Six
Three Sweaters for price of---------- Two

Don't Forget—The last day October 10th.

Our Fall Outfit now goes to press and will be ready about October 15th. As soon as it is ready we will forward the samples to you.

SUPERIOR TEXTILE MILLS
A. Starr, President

The aforementioned representations and descriptions made by respondent in the aforesaid price lists, advertisements, and other advertising media serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that for the price which they pay for the stated number of articles of haberdashery they will receive, in addition to the articles purchased at and for the regular price therefor, one article absolutely free; and further that there is a time limitation within which they may purchase the aforementioned articles of haberdashery and receive, upon the purchase of said articles, one article absolutely free.

PAR. 5. In truth and in fact, purchasers do not receive one article of haberdashery absolutely free when they purchase the stated number of articles for the advertised price in that the price purportedly charged for the stated number of articles of haberdashery also actually covers the total sale price for the entire number of articles of haberdashery. Further, there is no time limitation within which purchasers may buy the aforementioned haberdashery for the purported special prices.

PAR. 6. In the course and conduct of his business respondent has made other false and misleading representations and statements concerning his business status, the date of the establishment of his business, and in other respects, of which the following is representative:

Established 1905

SUPERIOR TEXTILE MILLS
16–20 East 12th Street, New York, N. Y.
Postage paid to all parts of U. S. A.

SUPERIOR TEXTILE MILLS
Makers of Superior Quality Shirts
and Wearing Apparel for Men
16–20 East 12th Street

New York

Direct from Mill

Direct from Mills to Wearer

We are manufacturers of a complete line of: Shirts—Silk Neckwear—Hosiery—Pajamas—Underwear, etc. * * *

PAR. 7. Through the above set out representations made by the respondent he represents that his business was established in 1905; that he is a manufacturer of the wearing apparel which he sells; that he owns or operates a textile mill, and that he sells direct from mill to wearer.

In truth and in fact, the respondent's business was not established in 1905, but sometime after the year 1925. He is not a manufacturer of wearing apparel, and he does not own, operate, or, directly and absolutely, control any textile mill, and he does not sell direct from mill to wearer.

PAR. 8. For many years a substantial part of the consuming public has expressed, and has had, a marked preference for products sold and distributed to the public by the manufacturers of the same. A substantial part of the consuming public is aware of the prevailing economies and other advantages that are reflected in dealing direct with manufacturers thereof, and the public generally understands how these economies and other advantages are brought about. It places confidence in the manufacturers of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 9. There are among the competitors of respondent manufacturers and distributors of like and similar products who truthfully advertise and represent their business status, and who refrain from advertising or representing through their price lists, advertisements, and other advertising literature that they are an old-established house and that they own and operate mills, or that they sell direct from mill to wearer when such is not the case.

PAR. 10. 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 have a tendency and capacity 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 erroneously and mistakenly believe that the various representations made by respondent, and herein set out, are true.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondent have a tendency and capacity to induce, and do 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 to respondent from those competitors engaged in similar businesses and herein referred to. As a consequence thereof substantial injury has been done 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. 12. 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 issued a complaint on the 27th day of July 1937, against the respondent, Abraham Starr, trading as Superior Textile Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

The respondent filed his answer to the complaint on September 18, 1937.

After the filing of the answer to the complaint, testimony, and evidence in support of the complaint were introduced by S. Brogdyne Teu, II, Esq., attorney for the Commission, and in opposition to the complaint by the respondent, pro se, before Edward E. Reardon, Esq., theretofore duly designated an examiner by the Commission.

The testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint; the answer to the complaint; the testimony and evidence; and upon the brief of counsel for the Commission; 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 the findings of the Commission as to the facts and the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Abraham Starr, is an individual trading as Superior Textile Mills, and having his principal office and place of business located at Nos. 16–20 East Twelfth Street in

the city and State of New York. The respondent, trading under the name Superior Textile Mills, is and has been engaged in the business of the sale and distribution in commerce among and between the various States of the United States of shirts and wearing apparel for men including underwear, hosiery, pajamas, and other articles of haberdashery, since on or about 1925.

The respondent employs, and has employed, about 75 salesmen who sell respondent's merchandise, above mentioned, to consumers in States other than New York, taking orders from the consumers in a house-to-house canvass. After the orders have been received by the respondent's salesmen they transmit the same to the respondent at New York City, N. Y., who fills the order by shipping the merchandise from New York City to the purchaser located in States other than New York or other than the State of origin of the shipment.

PAR. 2. The respondent in the sale of his merchandise, as above set forth, is and has been in substantial competition with others, individuals, firms, and corporations, who are, and have been, engaged in the business of the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of men's shirts, wearing apparel, and other articles of haberdashery.

PAR. 3. Respondent, in soliciting the sale and in selling his products, and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised his commodities through the media of price lists, advertisements, and other printed matter, published, issued, and circulated through the United States mails, to his 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 him.

PAR. 4. The said price lists, advertisements, and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning his products. The following is representative of the representations made by respondent in his price lists, advertisements, and other advertising literature:

IMPORTANT ANNOUNCEMENT
TO ALL
SUPERIOR REPRESENTATIVES

October 10th will be the last day for the FREE MERCHANDISE SALE:

Four Shirts for the price of	Three
Four Ties for the price of	Three
Four Undergarments for price of	Three
Four Workshirts for price of	Three
Four Pair Pajamas for price of	Three
Seven Pair Hose for price of	Six
Three Sweaters for price of	Two

Don't Forget—The last day October 10th.

Our Fall Outfit now goes to press and will be ready about October 15th. As soon as it is ready we will forward the samples to you.

SUPERIOR TEXTILE MILLS
A. Starr, President

The aforementioned representations and descriptions made by respondent in the aforesaid price lists, advertisements, and other advertising media serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that for the price which they pay for the stated number of articles of haberdashery they will receive, in addition to the articles purchased at and for the regular price therefor, one article absolutely free; and further that there is a time limitation within which they may purchase the aforementioned articles of haberdashery and receive, upon the purchase of said articles, one article absolutely free.

PAR. 5. In truth and in fact, purchasers do not receive one article of haberdashery absolutely free when they purchase the stated number of articles for the advertised price in that the price purportedly charged for the stated number of articles of haberdashery also actually covers the total sale price for the entire number of articles of haberdashery. Further, there is no time limitation within which purchasers may buy the aforementioned haberdashery for the purported special prices.

PAR. 6. In the course and conduct of his business respondent has made other false and misleading representations and statements concerning his business status, the date of the establishment of his business, and in other respects, of which the following is representative:

Established 1905
SUPERIOR TEXTILE MILLS
16–20 East 12th Street, New York, N. Y.
Postage paid to all parts of U. S. A.

SUPERIOR TEXTILE MILLS
Makers of Superior Quality Shirts
and Wearing Apparel for Men
16–20 East 12th Street,
New York

Direct from Mill

Direct from Mills to Wearer

We are manufacturers of a complete line of: Shirts—Silk Neckwear—Hosiery—Pajamas—Underwear etc. * * *

PAR. 7. Through the above set out representations made by respondent he represents that his business was established in 1905; that he is a manufacturer of the wearing apparel which he sells; that he owns or operates a textile mill, and that he sells direct from mill to wearer.

In truth and in fact, the respondent's business was not established in 1905, but sometime after the year 1925. He is not a manufacturer of wearing apparel, and he does not own, operate, or directly and absolutely control any textile mill, and he does not sell direct from mill to wearer.

PAR. 8. For many years a substantial part of the consuming public has expressed, and has had, a marked preference for products sold and distributed to the public by the manufacturers of the same. A substantial part of the consuming public is aware of the prevailing economies and other advantages that are reflected in dealing direct with manufacturers thereof, and the public generally understands how these economies and other advantages are brought about. It places confidence in the manufacturers of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 9. There are among the competitors of respondent manufacturers and distributors of like and similar products who truthfully advertise and represent their business status, and who refrain from advertising or representing through their price lists, advertisements, and other advertising literature that they are an old-established house and that they own and operate mills, or that they sell direct from mill to wearer when such is not the case.

PAR. 10. 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 have a tendency and capacity 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 erroneously and mistakenly believe that the various representations made by respondent, and herein set out, are true.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondent have a tendency and capacity to induce and do 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 to respondent from those competitors engaged in similar businesses and herein referred to. As a consequence thereof substantial injury has been done 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 and each of them, are all to the prejudice of the public, 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 complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward E. Reardon, 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 by S. Brogdyne Teu, II, counsel for the Commission (the respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent Abraham Starr, individually and trading as Superior Textile Mills, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fabrics or wearing apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the word "Mills" in respondent's trade name or of the term "direct from mills to wearer," or any words or terms of similar import or 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 such respondent actually owns and operates or directly and absolutely controls the manufacturing plant wherein said products are manufactured by him.

2. Representing that any article regularly included in a combination offer with other articles is "free" or that the sale thereof constitutes a "free merchandise sale."

3. Representing, designating, or describing any article or articles delivered to purchasers of other articles as "free" until and unless the conditions under which such article or articles are delivered to such purchasers are stated in immediate connection or conjunction with the term "free" in words, letters and figures of equal conspicuousness and there is no deception as to the price, quality, character, or any other feature of any of the items in the offer.

4. Representing that respondent's business was established in 1905, or at any time other than the date of its actual establishment.

5. Representing that any offer of merchandise is limited as to time or otherwise unless such offer is in fact so limited.

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 setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

QUALITY BAKERS OF AMERICA ET AL.

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARA. (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 3218. Complaint, Aug. 28, 1937—Decision, Nov. 15, 1939

Where a corporation, stock of which was held exclusively by some 70 non-competitive wholesale baking concerns located in various sections of the United States, constituting membership of said bakers' unincorporated association, designed and used to facilitate and further the objectives, operations, policies, and business of said corporation and the stockholders of said corporation, which (1) was engaged in purchasing commodities as purchasing agent for its stockholders and members, as aforesaid, of said association, (2) constituted the operative agency acting in behalf of said association and members thereof, (3) conducted numerous activities for said association members, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance, (4) in executing orders placed with it by its said stockholders and association members, transmitted such orders and purchased commodities from one or more of a group of over 200 manufacturers, processors, producers or distributors located in many different States, and (5) was compensated or reimbursed for the cost of such various services under definite arrangements and agreements, entered into between it and the association on the one hand and the members thereof on the other, by which it was agreed that one-half of the brokerage paid on each member's orders should be applied to the credit of the particular member's dues and remaining half applied by the board of directors, as it shall determine, for service purposes for the benefit of the members of the association in question, and (6) supplied to stockholders, whose credits for brokerage fees exceeded the amounts charged against them for dues, benefit of special services not included in the services rendered to all stockholders—

(*a*) Accepted and received, as above set forth, brokerage fees from sellers on purchases of commodities made by its stockholders, while acting as the agent, representative, and intermediary of such stockholders and in their behalf, and while owned and controlled by them, and rendering no service to the sellers of commodities to it, and who paid such brokerage fees, but services to its stockholders in connection with the purchase of commodities by them or with the operation of their respective businesses, and not selling services to any sellers of commodities or services in connection with the sale of a commodity to it or to its stockholders; and

Where wholesale baking concerns, stockholders of said corporation, and members of said association, engaged in purchasing commodities, including flour and many other food materials, and a great variety of supplies and equipment, including machines used in business in question, from sellers in various States, and in transmitting orders for the purchase of merchandise to said corporation or service company—

(*b*) Accepted and received, as aforesaid, brokerage or commissions from said corporation and service company in money, credits, benefits, and services paid for and furnished from and by such brokerage fees, which were paid by the sellers of commodities in question to such service company:

Held, That such plan of operation and practices and policies of said service company and association, and members and stockholders thereof, resulted in transmission of brokerage fees and commissions from sellers to buyers on transactions involving purchase and sale of commodities in interstate commerce, and that aforesaid acts, practices and policies were violative of the provisions of paragraph (*c*) of Section 2 of the Clayton Act, as amended.

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

Mr. Allen C. Phelps for the Commission.

Davis, Wagner, Heater & Hallett, of New York City for respondents, excepting respondent flour manufacturers.

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for Washburn Crosby Co., Inc., and Red Star Milling Co.

Mr. Bradshaw Mintener, of Minneapolis, Minn., for Pillsbury Flour Mills Co.

Foulston, Siefkin, Foulston & Morris, of Wichita, Kans., for Kansas Milling Co.

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," commonly known as 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," commonly known as the Robinson-Patman Act, 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. (*a*) Respondent, Quality Bakers of America, is a voluntary unincorporated association, formed in 1922, having its principal place of business at 120 West Forty-second Street, New York City. It is hereinafter referred to as the "Association" and its members are wholesale baking concerns located in various sections of the United States.

(*b*) Respondent members of said Association are about 70 in number and are located in various sections of the United States. Said members are corporations, partnerships, and individuals engaged in the wholesale bakery business. All of the members of said Association are not known to the Commission. Those of its officers, executive committee, and representative members who are known, and who can be conveniently reached are specifically named as respondents herein. All the other members of said Association are hereby made respondents without being individually named because they constitute a class or group too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. The following named representative members of the Association are made respondents hereto both individually and in their said representative capacity: Respondents, Firch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt. Respondent members of the Association, both named and unnamed, are hereinafter collectively referred to as "members." Said members are, among themselves, mutually noncompetitive. Membership is lost whenever a member's trade becomes competitive with the trade of another member or members. Such membership is obtained solely through invitation and election.

(*c*) Respondents, C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pennsylvania; J. P. Duchaine, located at 229 Coffin Avenue, New Bedford, Mass.; Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill.; and W. S. Allison, located at 120 West Forty-second Street, New York, N. Y.; are respectively president, vice-president, treasurer, and secretary and general manager of the Association, and each of them are members of the Executive Committee thereof. Respondents, E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, N. H.; S. S. Watters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.;

Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.; are the other members of the said Executive Committee. The said respondent officers and executive committeemen are made parties respondent hereto in their official capacities and as representatives of the aforesaid class or group of unnamed respondents.

(*d*) Respondent, Quality Bakers of America, Inc., is a Delaware corporation, having its principal place of business at 120 West Forty-second Street, New York City. It is the operative agency, acts on behalf of the Association, and will be designated and referred to hereinafter as the Service Company. As such, said respondent corporation conducts numerous activities for the members of the Association, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Company is held exclusively by members of the Association, no stockholder being entitled to hold more than 10 or less than 5 shares thereof.

PAR. 2. The Association, and its members as aforesaid, in the usual course and conduct of their respective businesses, are engaged in interstate commerce, transporting and causing to be transported their wholesale bakery products from the respective States of their production to their respective customers located in other States. The Service Company, in the regular course and conduct of its business, acting for and on behalf of the Association and its members, in its merchandising activities, heretofore in paragraph 1 mentioned and hereafter in paragraph 3 described, is engaged in purchasing materials, supplies, and equipment and in causing the same to be transported from the respective States where located at the time of sale to and into and through other States of the United States wherein the Service Company and the various respondent members are located.

PAR. 3. Among the services rendered to members of the Service Company is that of negotiation for the purchase and the purchase and distribution of merchandise. The lines of merchandise so purchased include flour and many other food materials, required by said members in the production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Company, payment being made by it to the vendors. In other cases said company does not pay the pur-

chase price nor take title to the merchandise, but purchases same for and on behalf of respondent members of the Association. In said purchasing service the Service Company sometimes receives the merchandise and reships to the members of the Association, and on other occasions it directs the vendor to ship direct to the members as consignees. The said Service Company and the Association and its members, through the said Service Company as intermediary, caused to be transported the various lines of merchandise so purchased including flour, food materials, supplies, and equipment from the State of location where sold to, into and through the various other States of the United States in which the respective members of said Association are located, and into the State of New York where the Service Company is located. In its said purchasing service the said company is obligated to obtain and actually obtains from vendors the best prices, quality and service that it can on behalf of members and therein acts as intermediary between said vendors and said members.

PAR. 4. In the regular course and conduct of its purchasing service, in interstate commerce as hereinabove alleged, respondent Service Company, for more than 5 years last past has received and accepted from several hundred concerns, or their agents, selling practically all materials, supplies, and equipment purchased by said company, valuable price concessions, as brokerages, commissions, or other compensation, and allowances or discounts in lieu of brokerage; and the said Service Company now receives and accepts the same from many such concerns, including those corporate respondents hereinafter referred to as "respondent sellers." Each year of its said operations the said Service Company has thus received and accepted substantial sums, and in 1936 received and accepted in the aggregate $181,528.20, as brokerages, commissions, or other compensation. The receipts of said company as brokerages and commissions or other compensation all inure to the benefit of the members. One-half thereof is retained by the Service Company for the purpose of operating the various above-mentioned services maintained and made available to the entire membership by the said company. The remaining one-half thereof is distributed as patronage dividends, proportionally to the individual members, whose purchases are deemed to have earned the so-called brokerages or commissions or other compensation, in the form of credits against dues charged respectively, by the said company, to said members for such of the services, available at cost, as may be individually subscribed to by them.

Under the circumstances as hereinabove set out—namely, that all of the stock in the Service Company receiving such brokerage fees, compensations, and allowances and allowances or discounts in lieu

of brokerage, is owned and held by the member buyers of the Association—no services connected with the transactions of sale and purchase of the aforesaid materials, supplies and equipment on which such brokerage fees, compensations and other allowances were and are being paid and made, have either been or are being rendered to the said sellers by the Service Company or the Association or its members.

PAR. 5. Respondent Washburn Crosby Co., Inc., is a corporation with an office and principal place of business at 80 Broad Street in the city of New York, State of New York. Respondent Pillsbury Flour Mills Co. is a corporation with office and principal place of business at 21 West Street in the city of New York, State of New York. Respondent Red Star Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Consolidated Flour Mills Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Kansas Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. These last named respondents will hereinafter be designated and referred to as "respondent sellers." Said respondents and each of them in this paragraph named are and for more than 1 year last past have been engaged in the business of manufacturing and selling flour to numerous and divers wholesalers, jobbers, merchants, and dealers, including the aforesaid Service Company, respondent, and respondent members of the aforesaid Association, and in the course of such business cause the said flour when sold to be shipped and transported from the State of its location at the time of said sale to, into and through the various other States of the United States in which the said purchasers are located.

Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors, importers, and producers engaged in the common practice of selling a substantial portion of their commodities, merchandise, flour, food stuffs, equipment, supplies, and machinery in interstate commerce to the aforesaid Service Company, respondent, and to the members of the aforesaid Association for and on behalf of whom the said Service Company, respondent, acts as intermediary, in the manner and form hereinabove described. Said group or class of sellers comprises a large number of corporations, partnerships, and individuals and are too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

In the course of such commerce said respondent sellers and each of them have paid or granted and are paying or granting to the said Service Company and to the respondent members through that company as intermediary acting in fact for the respondent members of the aforesaid Association, commissions, brokerage fees, and other compensation and allowances or discounts in lieu thereof upon purchases of said commodities made by respondent buyers from said respondent sellers through said Service Company.

PAR 6. The payment or granting of such commissions, brokerage fees, and other compensations and allowances or discounts in lieu thereof by said respondent sellers to the Service Company, and the receipt and acceptance thereof by the Service Company acting as intermediary for and on behalf of the Association, and for and on behalf of each of the aforesaid member respondents, and the participation in and direction or conduct of such activities by the individual respondents acting as officers and members of the executive committee of the aforesaid respondent Association, all in the manner and form aforesaid, are in violation of the provisions of subsection (*c*) of section 2 of the act described in the preamble hereof.

MODIFIED 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, (the Clayton Act), as amended by section 1 of an 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 August 28, 1937, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (*c*) of section 2 of said act, as amended. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence were introduced by Allen C. Phelps, attorney for the Commission, before John W. Addison, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Davis, Wagner, Heater & Hallett, attorneys for all of the above-named respondents except Washburn Crosby Co., Inc., Pillsbury Flour Mills Co., Red Star Milling Co., Consolidated Flour Mills Co., and Kansas Milling Co.; and by Frank J. Morley, A Lyman Beardsley, and John

deLaittre, attorneys for respondents Washburn Crosby Co., Inc., and the Red Star Milling Co.; and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., 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, answers, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said Allen C. Phelps for the Commission and Gug C. Heater of said firm of Davis, Wagner, Heater & Hallett, attorneys for the parties respondent represented by them, and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Quality Bakers of America is a voluntary unincorporated association formed in 1922, having its headquarters at 120 West Forty-second Street, New York City. The membership of said association comprises about 70 wholesale baking concerns located in various sections of the United States. Among the members of said association are the following respondents, fairly representative of all of said members, to wit: Firch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt.

The officers of respondent Quality Bakers of America (hereinafter referred to as the Association) are respondent C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pa., president; respondent J. P. Duchaine, located at 229 Coffin Avenue, New Bedford, Mass., vice-president; respondent Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill., treasurer; and respondent W. S. Allison, located at 120 West Forty-second Street, New York, N. Y., secretary. The executive committee of the Association

is composed of the above officers and of respondents E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, N. H.; S. S. Watters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.

The members of the Association, engaged respectively in the wholesale bakery business, are, among themselves, mutually noncompetitive. Membership in the Association is obtained solely through invitation and election.

The objects of the Association as set forth in its constitution are the following:

a. To increase the efficiency of each member in every department of his business.

b. To enable each member to make better bakery products and to market them more efficiently.

c. To assist each member to gain the recognition of the fact that bakery products of the highest quality are indispensable to the life and health of the community.

d. To stimulate the desire of each member to be of service to his fellow-members and the public with respect to the foregoing.

PAR. 2. Respondent Quality Bakers of America, Inc., (hereinafter referred to as the Service Company), is a Delaware corporation having its principal place of business at 120 West Forty-second Street, New York City. The officers of this respondent are the same respondents who are the officers of the Association, as described in paragraph 1 above. The board of directors of this respondent is made up of the said officers and respondents Herbert J. Laub and James B. Dwyer, described in said paragraph 1.

Respondent Quality Bakers of America, Inc. is engaged in the business of purchasing commodities, as a purchasing agent, for the members of the Association, who are likewise holders of the stock of the Service Company, as hereinafter stated. It is the operative agency and acts on behalf of the Association and its members. As such, said respondent corporation, in addition to its purchasing operations, conducts numerous activities for the members of the Association, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Company is held exclusively by members of the Association, as hereinafter stated.

PAR. 3. All the outstanding stock of respondent Quality Bakers of America, Inc. (the Service Company) is owned by the members of the Quality Bakers of America (the Association). By a resolution of the Service Company dated April 5, 1937, the minimum amount of stock for each stockholder was set at 7½ shares and the maximum at 15 shares, of a subscription value of $100 per share. The stockholders of Quality Bakers of America, Inc., as of November 6, 1937, and the number of shares owned by each, were as follows:

Name and address:	*No. shares*
Aikman Port Huron Bread Co., Port Huron, Mich	15
Anchor Baking Co., Sacramento, Calif	10
The Baker Bread Co., Zanesville, Ohio	10
The Frank Baker Bread Co., Lima, Ohio	10
Berdan Bread Co., Bay City, Mich	10
A. Bowman & Son, Roanoke, Va	7½
L. Bromm Baking Co., Inc., Richmond, Va	10
Cole Baking Co., Bluefield, W. Va	15
Cote Brothers, Inc., Manchester, N. H	15
Davidson Baking Co., Portland, Oreg	10
Ed. DeLorge Baking Co., Inc., Biddeford, Maine	15
Derst Baking Co., Savannah, Ga	15
Dreikorn's Bakery, Inc., Holyoke, Mass	15
Eastern Shore Baking Co., Salisbury, Md	15
M. Erickson Bakery Co., LaCrosse, Wis	5
Exwin Erickson, LaCrosse, Wis	10
Firch Baking Co., Inc., Erie, Pa	15
Geneva Baking Co., Geneva, N. Y	15
Gorman's Bakery, Inc., Central Falls, R. I	15
Gravem-Inglis Baking Co., Stockton, Calif	5
Hecht's Bakery, Bristol, Tenn	10
Herman Hecht, Bristol, Tenn	5
Keller Baking Co., Inc., Troy, N. Y	15
The Jacob Laub Baking Co., Cleveland, Ohio	15
George E. LeStourgeon, Bridgeton, N. J	15
Liberty Baking Co., Pittsburgh, Pa	15
Maier's Bakery, Reading, Pa	15
Miller-Patton Baking Co., Rockford, Ill	15
My Bread Baking Co., New Bedford, Mass	15
Nolte Baking Co., Wheeling, W. Va	7½
Polk County Baking Co., Lakeland, Fla	7½
Purity Baking Co., Decatur, Ill	15
Remar Baking Co., Oakland, Calif	10
The Reymond Baking Co., Waterbury, Conn	15
Sanitary Baking Co., Clarksburg, W. Va	15
Saylor's Bakery, Inc., Tamaqua, Pa	15
Schaefers, Inc., Springfield, Ohio	15
Sta-Kleen Baking, Inc., Lynchburg, Va	15
Staudt's Bakery, Inc., Raleigh, N. C	5
Frederick W. Staudt, Raleigh, N. C	2½

Name and address—Continued.	No. shares
Storck Baking Co., Parkersburg, W. Va	15
Stroehmann Brothers Co., Altoona, Pa	7½
Stroehmann Brothers Co., Harrisburg, Pa	15
Stroehmann Brothers Co., Norristown, Pa	15
Stroehmann Brothers Co., Olean, N. Y	7½
Stroehmann Brothers Co., Williamsport, Pa	15
Sutorius Bread Co., Newton, Kans	15
Swan Brothers, Inc., Knoxville, Tenn	15
Swander Baking Co., Rapid City, S. D	5
Sweaney's Bakery, Canton, Ohio	10
Trausch Baking Co., Dubuque, Iowa	15
The Uffelmann Baking Co., Cincinnati, Ohio	7½
Vermont Baking Co., White River Jct., Vt	15
Waldensian Baking Co., Valdese, N. C	15
Winter's Bakery, San Diego, Calif	10
Wm. Wolf Bakery, Inc., Baton Rouge, La	15
Wool-Scott Bakery, Inc., Ithaca, N. Y	5

PAR. 4. Respondents Washburn-Crosby Co., Inc., and Red Star Milling Co., were legally dissolved June 1, 1937, prior to the issuance and service of the complaint herein. Respondent Pillsbury Flour Mills Co. is a Delaware corporation with its general office located in Minneapolis, Minn. Respondent Consolidated Flour Mills Co. is a corporation with its office and principal place of business in the city of Wichita, State of Kansas. Respondent Kansas Milling Co. is a corporation with its principal office and place of business located in the city of Wichita, State of Kansas.

Respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co. are engaged in the milling and sale of flour. Prior to about May 1, 1937, which was prior to the issuance and service of the complaint herein, they formerly paid brokerage fees of 10 cents per barrel to respondent Quality Bakers of America, Inc., the usual and customary brokerage fees paid by them to brokers being 15 cents per barrel, but on or about said date said respondents ceased making such brokerage payments to respondent Quality Bakers of America, Inc., and have not resumed this practice.

PAR. 5. Among the services rendered by the Service Company to its said stockholders is that of the negotiation for the purchase and the purchase and distribution of merchandise and equipment. The lines of merchandise so purchased include flour and many other food materials, required by said stockholders in the production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Com-

pany, payment being made by it to the vendors and said commodities being resold by the Service Company to its stockholders. In other cases said company does not pay the purchase price nor take title to the merchandise, but purchases same on the order of and on behalf of its stockholders on a brokerage basis, brokerage fees being paid by the vendors to the Service Company. In said purchasing operations the Service Company usually directs the vendor to ship direct to the stockholders as consignees.

Respondent stockholders of respondent Quality Bakers of America, Inc., and the other stockholders, all of whom are named in paragraph 3 hereof, are severally engaged in purchasing commodities from sellers located in States other than the State in which such Service Company and said stockholders individually maintain their respective principal places of business. Said stockholders, or some of them, daily transmit orders for the purchase of merchandise to respondent Service Company and such orders in nearly every case are transmitted by mail or other means of communication across State lines. In executing said orders and in purchasing the commodities specified therein, respondent Quality Bakers of America, Inc., transmits such orders and purchases commodities from 1 or more of a group of over 200 manufacturers, processors, producers, or distributors, located in many different States, and who in a large majority of cases are located in a State other than the State of New York, where the Service Company has its principal office and place of business. As a result of such purchase and sale transactions, respondent Quality Bakers of America, Inc., and each of its said stockholders transport or cause to be transported baker's supplies and commodities from the sellers thereof, located in many different States, to, through, and into States other than the State of origin or shipment of such commodities. Said stockholders habitually transmit money or the equivalent thereof in payment of the purchase price for such commodities by United States mail and other means, from their individual places of business, usually across State lines, to the sellers of such merchandise and products, and the Service Company daily receives brokerage fees on purchases made by its stockholders through it, which are transmitted to it by such sellers located in States other than the State of New York, through the medium of the United States mails and otherwise, most of such remittances crossing State lines between the offices of such sellers and the offices of the Service Company. Such purchases by the Service Company's stockholders through the Service Company, and the collection of such brokerage fees by said Service Company, in the manner stated, cannot be accomplished or brought about and is not effectuated except by the use of interstate channels of

communication, nor are such commodities so purchased obtained, nor can they be obtained in most cases except by the transportation of the same, at the instance and request of the Service Company and its stockholders, from one State to, into, or through other States of the United States. In using such methods of ordering, purchasing, and making payment for commodities so purchased and in obtaining and collecting such brokerage fees, respondent Service Co. and its stockholders operate in the channels of interstate commerce and are engaged in such commerce. Respondent Service Company is an indispensable interrelated instrumentality in the course of such commerce, and its operations cannot be conducted except by means of the use of facilities available in the channels of interstate trade, communication, and commerce. Out of the brokerage fees so collected, respondent Service Co. transmits money or its equivalent and services and benefits paid for by such fees from its office in New York to its stockholders in other States. Said Service Company habitually sends its representatives from New York to its stockholders on their request to provide them with advice, expert knowledge, work, and labor, reports, recommendations, advertising matter, and other valuable things, both tangible and intangible. Many of the suggestions and recommendations of such representatives and the advertising matter are prepared and reduced to writing in the offices of the Service Company and transmitted by mail and other means to the stockholders in States other than the State of New York. The operations of respondent Service Company are centered in its offices in New York, but extend into every State in which one or more of its stockholders and the sellers of commodities with whom it negotiates purchases of commodities are located. The plan of operation of the Service Company and its stockholders, above described, is an integral whole which cannot be separated into constituent parts without destroying the whole. Said plan of operation contemplates the use of and uses the facilities and instrumentalities of interstate commerce and is effectuated almost entirely through the means and channels of traffic and commerce among and between the several States. Some of said stockholders sell the bakery products which they manufacture in States other than the State in which such products are processed and manufactured, and transport or cause the said products to be transported from their respective places of business to such other States.

PAR. 6. In the course and conduct of its said business, respondent Service Company, since prior to June 19, 1936, has and does receive and accept from the numerous sellers of commodities above referred to, brokerage fees or commissions on purchases made by its stock-

holders through it, in the manner above stated. During the period from July 1, 1936 to July 1, 1937, the Service Company executed approximately 13,500 orders for the purchase of commodities on a brokerage fee basis for its stockholders, the purchase price of such commodities being estimated as having aggregated between $5,500,000 and $5,900,000 in amount. On such purchases the Service Company received brokerage fees from the sellers of such commodities totaling $163,933.84 in amount. Since July 1, 1937 the Service Company has continued to purchase commodities on a brokerage fee basis for its stockholders in the same manner and using the same methods as those used in its operations before that date.

PAR. 7. Each member of the Association enters into a certain Membership and Service Agreement with the Association and the Service Company, jointly. Among the provisions of such agreement, is the following, which has been observed, complied with and effectuated, to wit:

> That all brokerage, selling and commissions, selling discounts or other amounts allowed by suppliers of materials, manufactured advertising, machinery and equipment and collected by the Quality Bakers of America, Inc., shall be applied one-half to the credit of the Member's dues on whose business the brokerage or allowance originated, and the remaining half shall be applied by the Board of Directors in such manner as it shall determine, for service purposes for the benefit of the members of the Quality Bakers of America.

By another of the terms of said membership and service agreement, the members of the Association and the stockholders of the Service Company agree to pay dues to the Service Company. The amount of said dues for each member-stockholder is determined by the baking capacity of his plant, the minimum being set at the sum of $25 per week or $1,300 a year. Such dues are charged on the books of the Service Company against the individual member-stockholder and are offset by credits for one-half of the brokerage fees collected by the Service Company on purchases made by such member-stockholder through the Service Company. In 1936, the dues actually charged to stockholders ranged from nothing for suspended members to $5,920, the latter figure being for a stockholder with 5 plants. In 1936, of 69 member-stockholders, 36 were credited with more from one-half of the brokerage fees collected by the Service Company on their purchases than the dues charged against them amounted to. In the cases of all but 10 of said stockholders, the total brokerage fees collected on purchases made by them through the Service Company exceeded the amount of dues charged against them. During the year

1936 the total amount of brokerage fees collected by the Service Company amounted to $181,528.20; of the amount, $90,760.10 was credited by the Service Company to the respective accounts of its member-stockholders. Dues charged against all the stockholders during 1936 amounted to $79,556.

PAR. 8. Each member of the Association (who are likewise stockholders in the Service Company) has the above described membership agreement and service contract with the Association and Service Company jointly. Among the provisions in said membership agreement and service contract which are and have been observed and effectuated are the following:

Quality Bakers of America, Inc. agrees, during the term of this agreement, to furnish the Member, in common with other members, various services or assistance in the management of its bakery, such services to be adjusted to meet the needs of the industry and the members. These services shall be rendered along the following broad lines:

I

EXECUTIVE SERVICE

To advise on bakery management problems.
To issue publications and bulletins to further the interchange of ideas.
To conduct conferences.
To further the development of various departmental activities to the end that all possible efficiencies and economies may be effected for members.

II

MANUFACTURING SERVICE

To render architectural and construction service.
To advise on equipment.
To render general operating efficiency service.
To render production service.
To advise on ingredients.
To maintain a bread inspection and scoring service.
To effect savings through pooled purchases.

III

MERCHANDISING SERVICE

To render sales promotion service.
To issue sales bulletins and publications.
To handle marketing research.
To prepare an annual advertising campaign on a cost non-profit basis.
To handle members' individual advertising requirements.
To render service on designing packages, trade marks, wrappers, etc.
To conduct sales and advertising training courses.

IV

ADVISORY SERVICES

To maintain special services in such fields as cost finding, comparisons and analysis; legal problems; trade mark protection; taxes; audits; insurance; general efficiency, etc.

THE MEMBER AGREES to cooperate in furthering the various policies, plans and activities of the organization, and to carry out the suggestions and recommendations made for the improvement of the Member's business, failure to abide by any of them being sufficient reason for the cancellation of this agreement:

That all information, ideas, records, forms, proceedings, or any parts of such, submitted to the Member by the Quality Bakers of America, or its operating unit, shall be held and treated as confidential, and used only for the benefit of members in good standing;

That the Member owns, controls or operates a plant or plants for the manufacture of bakery products in the following named city or cities, a detailed map showing actual trading area covered by all routes to be attached and made a part of this agreement.

* * * * * * *

That inasmuch as this is an organization of non-competitors, if the member shall in any manner become a competitor of any other member in the personal delivery field, the undersigned member consents that automatically he shall be dropped, and that this contract shall terminate, subject however to review by the Executive Committee.

PAR. 9. In the course and conduct of its said business, respondent, Quality Bakers of America, Inc., renders to all stockholders who purchase commodities through it, the service generally described in paragraph 8 above, under the headings "Executive service," "Manufacturing service" and "Merchandising service."

The expense of providing the above services to said buying stockholders is paid from the monies received by the Service Company from brokerage fees collected and profits on commodities bought and sold by it. Stockholders whose credits for brokerage fees exceed the amounts charged for dues, may and do request the benefit of such services not included in the above services rendered to all stockholders which are denominated Special Services and generally described under the heading "Advisory services" in paragraph 8 above. The cost of such special services is charged by the Service Company against the brokerage credits in excess of dues standing on the books of the Service Company in favor of the individual buying stockholder receiving such special services.

All said services above described are in fact services rendered to the stockholder by the Service Company, and are designed to be and are services in connection with the purchase of commodities by such stockholders or in connection with the operation of their re-

spective businesses. Such services are not selling services rendered to any seller of commodities, nor services rendered by either the Service Company or its stockholders in connection with the sale of a commodity by any seller to the Service Company or its stockholders. There is no evidence in the record that the Service Company has contracted with any seller to render him any service in connection with the sale of his commodities or to find buyers for him or to promote the sale of his merchandise.

PAR. 10. The Service Company is a Delaware corporation, organized under a general incorporation law governing the organization of corporations for profit. The stockholders elect a board of directors which elects the officers. The board of directors control the direct management, policies, and operations of the company, which are similar to those usually followed by corporations operating for profit, except that, exclusive of a nominal stock dividend, one-half of the profits accruing to the Service Company are distributed to the stockholder on a patronage basis in proportion to the profits realized by the company on brokerage fees or other money received by it on purchasing transactions completed for the individual stockholder.

The stock certificates issued to each stockholder contain the following provisions:

Extract from Article V of By-Laws of Quality Bakers of America, Inc.

Section 5. Transfer of Ownership of Stock, No sale, assignment or pledge of the shares of capital stock of this Corporation shall be made by the owner thereof without the written consent of this Corporation; and no stockholder of this Corporation shall have and possess any voting rights on said shares should he for any reason cease to be a member of Quality Bakers of America, an Unincorporated Association; and immediately upon ceasing to be such a member, he shall give and grant unto the Corporation the exclusive right, for a period of six months from the date thereof, to purchase, or nominate a purchaser, for the shares of stock then owned by the stockholder, at the price he shall have paid for the same upon his original subscription therefor; but failure on the part of the Corporation to act within such time, unless extended, shall render this restriction void.

All of the profits of said company inure to the benefit of the stockholders in the form of money and credits and valuable benefits and services.

PAR. 11. In all matters and transactions in which the Service Company negotiates or deals with sellers in connection with the purchase of commodities by its stockholders, such Service Company is the agent and representative of such stockholders, acts in fact for them, and in their behalf, and is subject to their direct control.

CONCLUSION

The Commission concludes from the facts:

That respondent, Quality Bakers of America, Inc., and its stockholders are engaged in interstate commerce in all material aspects of the practices involved herein.

That in the course of such commerce, respondent, Quality Bakers of America, Inc., is and has been accepting and receiving brokerage fees from sellers on purchases of commodities made by its stockholders through it, while acting as the agent, representative, and intermediary of such stockholders and for them in their behalf and while owned and controlled by such stockholders.

That respondent stockholders and other stockholders of the Service Company in practice receive such brokerage fees and commissions from respondent Quality Bakers of America, Inc., in money, credits, benefits, and services paid for and furnished from and by means of such brokerage fees.

That said brokerage fees are paid by the sellers of commodities to respondent Service Company, and neither such Service Company nor any stockholder thereof renders any service, in connection with the sale of commodities, to any seller so paying such fees.

That respondent Quality Bakers of America (The Association) is an organization designed and used to facilitate and further the objectives, operations, policies, and businesses of the Service Company and its stockholders.

That respondent, Quality Bakers of America, Inc., is not a cooperative association within the meaning of section 4 of the Robinson-Patman Act.

That the plan of operation and the practices and policies of respondents, Quality Bakers of America, Inc., Quality Bakers of America, and their members and stockholders result in the transmission of brokerage fees and commissions from sellers to buyers on transactions involving the purchase and sale of commodities in the course of interstate commerce.

That said acts, practices, and policies are violative of the provisions, paragraph C of section 2 of the Clayton Act, as amended.

The respondents Washburn-Crosby Co., Inc., and Red Star Milling Co. were legally dissolved prior to the issuance and service of the complaint herein, and these companies are no longer corporate entities authorized to engage in business. The respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co., ceased paying brokerage fees to Quality Bakers of America, Inc.,

prior to the issuance and service of the complaint herein, have not resumed making such payments, and the Commission has no reason to apprehend that these respondents or any of them contemplate resuming or that they will resume the practice of paying such brokerage fees so discontinued prior to the issuance and service of said complaint.

MODIFIED 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 parties respondent named in the caption hereof, testimony and other evidence, taken before John W. Addison, 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 Allen C. Phelps, counsel for the Commission and Guy C. Heater and Bradshaw Mintener, counsel for certain of the respondents, and the Commission having made its findings as to the facts and its conclusion that the said parties respondent have violated, and are 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 respondents Quality Bakers of America, an unincorporated association, and Quality Bakers of America, Inc., a corporation, and their respective officers, representatives, agents, and employees, in connection with the purchase of commodities in interstate commerce by any member of said Quality Bakers of America or by any stockholder of said Quality Bakers of America, Inc., do forthwith cease and desist from receiving or accepting any brokerage fees or commissions or any allowances or discounts in lieu thereof, and do forthwith cease and desist from granting, paying, transmitting, or delivering any such fees, commissions, allowances, or discounts to said members or stockholders, either directly in the form of money or credits, or indirectly in the form of services, facilities, property or benefits provided or furnished through or by means of the expenditure or use of any such brokerage fees, commissions, allowances, or discounts.

It is further ordered, That respondents Firch Baking Co., Inc., Dreikorn Bakery, Inc., The Jacob Laub Baking Co., Liberty Baking Co., Stroehmann Brothers Co. and Vermont Baking Co., and their officers, representatives, agents, and employees, in connection with the purchase of commodities by said respondents in interstate commerce, do forthwith cease and desist from receiving or accepting from the sellers of such commodities, directly or indirectly, any brokerage fees or commissions or any allowances or discounts in lieu thereof, and from receiving or accepting from respondents Quality Bakers of America or Quality Bakers of America, Inc., any brokerage fees or commissions or any allowances or discounts in lieu thereof, received or accepted by said last-named respondents from such sellers, either in the form of money or credits or in the form of services, facilities, property, or benefits provided or furnished by said Quality Bakers of America or Quality Bakers of America, Inc., through or by means of the expenditure or use of any such brokerage fees, commissions, allowances or discounts.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Washburn Crosby Co., Inc., and Red Star Milling Co. for the reason that prior to the issuance and service of the complaint herein these respondents were legally dissolved.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co., for the reason that prior to the issuance and service of the complaint herein, these respondents ceased paying brokerage fees to respondent Quality Bakers of America, Inc., and the Commission has no reason to apprehend that said respondents or any of them contemplate resuming or will resume the practice of paying such brokerage fees to said respondent.

It is further ordered, That the parties respondent 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

ROBERT H. BENSON AND EMMA BENSON, TRADING AS BENSON SPECIALTY COMPANY

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

Docket 3795. Complaint, May 29, 1939. Decision, Nov. 15, 1939

Where two partners engaged in sale and distribution of specialty merchandise, including pens, jewelry, electric water heaters, and various other products, in commerce among the various States and in the District of Columbia; in representing, or purporting to represent, quality, material, construction, durability, and other characteristics of their various products, as promoted from time to time, and price at which sold, through advertising circulars and other printed matter and advertising insertions in newspapers, periodicals, and other publications distributed among prospective purchasers in the various States and in the District of Columbia—

(*a*) Represented, as typical, that certain fountain pens thus described and offered were unbreakable, carried a lifetime guarantee, and never needed repairs, and that cross necklaces thus offered were set with "facsimile" diamonds and carried an unlimited guarantee against tarnishing, loss of brilliancy, or of stones, etc., and were made of 14 carat gold or silver, facts being articles in question were not guaranteed, pens were not unbreakable and would need repairs, necklaces and other jewelry were neither 14 carat gold nor silver, and jewelry was of very cheap grade and quality, would soon tarnish, and was not equipped, as represented through word "facsimile," with stones having general appearance, quality, and brilliance possessed by diamonds and quality and value greater than imitation diamonds, and purported stones did not have same general appearance, etc., as genuine diamonds and were of no better grade or quality than ordinary cheap imitations;

(*b*) Represented, directly and indirectly, that certain pens, necklaces, and hot water discs had customary and usual retail prices greatly in excess of those at which they were offered and sold with certificates or coupons, and that said certificates or coupons had, in connection with purchase of such products, certain specified values, through such statements, among others, as "SPECIAL. This certificate and 59¢ entitles the bearer to one of our genuine indestructible $3.00 vacuum filler sackless fountain pens. * * * will be $3.00 after sale," etc., and "* * * This coupon and only 59¢ entitles bearer to one of our regular $5.00 cross necklaces. * * * This offer made possible by the manufacturer. * * *," and " * * * This coupon and $1.98 entitles the bearer to one of our regular $5.00 Electro Heat Kwick hot water disc as above described. * * *," facts being prices represented as customary retail prices of such products were fictitious and greatly in excess of those at which they were customarily offered and sold in normal course of business, certificates or coupons in question did not have value of $4.41, $3.02, or $2.41, as specified in such advertisements, but had no value whatever as prices charged in addition thereto were

regular and customary prices at which they sold their products in usual course of business;

(c) Represented, through such advertisements as above set forth, that said offers were special and limited, through such statements as "* * * Introductory offer. * * * Limit 3 pens to each customer," and, in connection with necklaces, "* * * Limit 2 to a coupon. * * * offer made possible by the manufacturer. Limited supply for this special sale," and, in connection with hot water pads, "* * * Through special arrangement with the manufacturer we are able to offer for 2 days only a special advertising discount of $3.02 * * *," and "* * * limited supply only one to each coupon," facts being said offers were neither introductory nor special and number of articles which might be purchased by any customer was not limited, but they sold as many as purchaser was willing to buy;

(d) Made use of words, in their various advertisements of their electric hot water heaters, "Underwriters Laboratories seal of approval on the 8 ft. cord of every Electro Heat Kwick," facts being entire electric water heater had not been approved by Underwriters Laboratory, as purchaser or prospective purchaser was thereby led to believe, but only cord for attaching heater to electric outlet; and

(e) Represented, in said advertisements, that such product had been tested and approved by duly qualified testing laboratory having facilities to make such test and certificate of merit issued, thereby approving said product as safe, sanitary, and speedy in action, through use of insignia or seal in advertisements bearing the words "Automotive Test Laboratories of America tested and approved Atla," facts being said Test Laboratories had no official standing, lacked facilities, or laboratory necessary to make efficient tests of such a device, and product in question had been found to be unsafe for use by attaching to ordinary household socket;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and that they had truthfully represented the quality, material, construction, durability, and other characteristics of their various products and the prices at which they were sold, and with result, by reason of such erroneous and mistaken belief, that number of purchasing public were induced to buy their said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. L. E. Creel, Jr. for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Robert H. Benson and Emma Benson, individually and as copartners trading as Benson Specialty Co., hereinafter referred to as respondents, have violated the provisions of the 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, Robert H. Benson and Emma Benson, are individuals and copartners trading as Benson Specialty Co. and have their office and principal place of business at 251 Plymouth Building in the city of Minneapolis, State of Minnesota.

Respondents are now, and for several years last past have been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of specialty merchandise including pens, jewelry, electric water heaters, and various other products.

In the course and conduct of their business the respondents promote the sale of certain types of merchandise during one period of time and other types of merchandise at other times but continue to use in the sale and distribution of all such merchandise the sales plan and other practices herein described.

Respondents cause said products, when sold, to be transported from their place of business in the State of Minnesota to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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. 2. For the purpose of inducing the purchase of the various products sold and distributed by them, the respondents, in the course and conduct of their business, have engaged in the practice of falsely representing the quality, material, construction, durability and other characteristics of their various products and the price at which said products are sold and distributed by them. Such false statements and representations are disseminated by means of advertising circulars and other printed matter and by insertions in advertisements appearing in newspapers, magazines and other publications, all of which are distributed among prospective purchasers of said products located in the various States of the United States and in the District of Columbia.

PAR. 3. Among and typical of the acts and practices above described the respondents falsely represent the quality, material, construction, durability, and other characteristics of certain of their products, namely, fountain pens and jewelry. As an example of this practice, the respondents place the following statements in various advertisements disseminated as aforesaid:

$3.00 vacuum filler sackless fountain pens. A lifetime guarantee with each pen. No repair bills. Every pen tested and guaranteed to be unbreakable for life.

Cross Necklaces in Plain Gold, Silver or Beautiful Facsimile Diamonds. Lifetime Guarantee. Unlimited guarantee against tarnishing, loss of brilliancy, loss of stones or in any other form. Choice of 14K Gold or Silver.

By means of the above representations and others similar thereto not specifically set out herein the respondents represent that their fountain pens are unbreakable, carry a lifetime guarantee, and never need repairs. In truth and in fact, said pens are not unbreakable for life, do not carry a lifetime guarantee and will need repairs.

In the same manner the respondents represent that the cross necklaces sold and distributed by them are set with facsimile diamonds, that they carry an unlimited guarantee against tarnishing, loss of brilliancy, loss of stones, or in any other form and that said jewelry is made of 14K gold or silver. In truth and in fact, the necklaces and other articles of jewelry sold and distributed by the respondents are not 14 carat gold or silver. Said articles of jewelry are not guaranteed to last a lifetime, or guaranteed not to tarnish, and the stones are not guaranteed against loss of brilliancy. In fact, said jewelry is of a very cheap grade and quality and will tarnish immediately or within a very short time. By the use of the word facsimile as descriptive of their diamonds, respondents represent that the various articles of jewelry sold and distributed by them are equipped with stones having a general appearance, quality, and brilliance possessed by diamonds and are of a quality and value greater than imitation diamonds. The jewelry sold and distributed by the respondents is not set with diamonds or facsimile diamonds and the purported stones do not have the same general appearance, quality, or brilliance possessed by genuine diamonds and are not of any better grade or quality than ordinary cheap imitations.

PAR. 4. Another and typical act and practice engaged in by the respondents in falsely representing their products and the terms and conditions under which said products are sold is the use of a purported coupon in their various advertising disseminated as aforesaid containing statements and representations with reference to the various conditions of the offer of sale. Among and typical of such statements and representations are the following:

SPECIAL

This certificate and 59¢ entitles the bearer to one of our genuine indestructible $3.00 vacuum filler sackless fountain pens. Introductory offer. This pen will be $3.00 after sale. Limit 3 pens to each customer.

This certificate is worth $4.41. This coupon and only 59¢ entitles bearer to one of our regular $5.00 cross necklaces. Limit 2 to a coupon. This offer made possible by the manufacturer. Limited supply for this special sale.

This coupon is worth $3.02. This coupon and $1.98 entitles the bearer to one of our regular $5.00 Electro Heat Kwick hot water disc as above described.

Limited Supply at Introductory Price. Through special arrangement with the manufacturer we are able to offer for 2 days only a special advertising discount of $3.02 on each Electro Heat Kwick nationally advertised at $5.00. Note—due to limited supply only one to each coupon.

By means of the above representations and others similar thereto not specifically set out herein the respondents represent both directly and indirectly that the customary and usual retail prices at which their various products are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate or coupon referred to is actually worth $4.41, $3.02, or $2.41 when offered as part payment of the purchase price of any specified article. By the same means the respondents represent that they are conducting a special or introductory offer and that the supply is limited to one, two, or three articles to each customer as specified in the advertisement.

In truth and in fact, the prices represented by the respondents as the customary retail prices of their products are, in fact, fictitious and greatly in excess of the prices at which said products are customarily offered for sale and sold by the respondents in the normal course of business. The respondents are not conducting an introductory or special offer and the certificate or coupon referred to in said advertisements does not have the value of $4.41, $3.02, or $2.41 as therein specified and do not have any value whatsoever as the price charged by the respondents in addition to the certificate or coupon is the regular and customary prices at which respondents sell their products in the usual course of business. The respondents do not limit the number of articles which may be purchased by any customer but sell as many of such articles as the purchaser is willing to buy.

PAR. 5. Another and typical act and practice engaged in by the respondents in falsely representing their products are representations and statements made with reference to certain hot water heaters sold and distributed by the respondents known as Electro Heat Kwick Heaters. Typical of this practice is the use in their various advertisements disseminated as aforesaid of the statement: "Underwriters Laboratories seal of approval on the 8 ft. cord of every Electro Heat Kwick" and, in addition, the use of the insignia or seal bearing the words "Automotive Test Laboratories of America tested and approved Atla."

By this means the purchaser or prospective purchaser is led to believe that the entire electric hot water heater has been approved by the Underwriters Laboratory when, in truth and in fact, only the cord used for attaching respondents' heater to an electric outlet has

been approved by the Underwriters. By the use of the seal of the Automotive Test Laboratories of America the respondents represent that said product has been tested and approved by a duly qualified testing laboratory having facilities to make such tests and that a certificate of merit has been issued by such laboratory approving said product as being safe, sanitary, and speedy in action. In truth and in fact, the Automotive Test Laboratories of America has no official standing and lacks the facilities or laboratory necessary to make efficient tests of such a device. Furthermore, said product has been found to be unsafe for use by attaching to the ordinary household socket.

PAR. 6. The use by the respondents of the aforesaid acts and practices has had, and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondents have truthfully represented the quality, material, construction, durability, and other characteristics of their various products and the prices at which said products are sold. On account of this erroneous and mistaken belief a number of the purchasing public have been induced to purchase respondents' products.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 May 1939, issued and thereafter served its complaint in this proceeding upon respondents, Robert H. Benson and Emma Benson, individually and as copartners trading as Benson Specialty Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 4th day of October 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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. Respondents, Robert H. Benson and Emma Benson, are individuals and copartners trading as Benson Specialty Co. and have their office and principal place of business at 251 Plymouth Building in the city of Minneapolis, State of Minnesota.

Respondents are now, and for several years last past have been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of specialty merchandise including pens, jewelry, electric water heaters, and various other products.

In the course and conduct of their business the respondents promote the sale of certain types of merchandise during one period of time and other types of merchandise at other times but continue to use in the sale and distribution of all such merchandise the sales plan and other practices herein described.

Respondents cause said products, when sold, to be transported from their place of business in the State of Minnesota to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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. 2. For the purpose of inducing the purchase of the various products sold and distributed by them, the respondents, in the course and conduct of their business, have engaged in the practice of falsely representing the quality, material, construction, durability, and other characteristics of their various products and the price at which said products are sold and distributed by them. Such false statements and representations are disseminated by means of advertising circulars and other printed matter and by insertions in advertisements appearing in newspapers, magazines, and other publications, all of which are distributed among prospective purchasers of said products located in the various States of the United States and in the District of Columbia.

PAR. 3. Among and typical of the acts and practices above described the respondents falsely represent the quality, material, construction, durability, and other characteristics of certain of their products, namely, fountain pens and jewelry. As an example of this practice, the respondents place the following statements in various advertisements disseminated as aforesaid:

$3.00 vacuum filler sackless fountain pens. A lifetime guarantee with each pen. No repair bills. Every pen tested and guaranteed to be unbreakable for life.

Cross Necklaces in Plain Gold, Silver or Beautiful Facsimile Diamonds. Lifetime Guarantee. Unlimited guarantee against tarnishing, loss of brilliancy, loss of stones or in any other form. Choice of 14K Gold or Silver.

By means of the above representations and others similar thereto not specifically set out herein, the respondents represent that their fountain pens are unbreakable, carry a lifetime guarantee and never need repairs. In truth and in fact, said pens are not unbreakable for life, do not carry a lifetime guarantee and will need repairs.

In the same manner the respondents represent that the cross necklaces sold and distributed by them are set with facsimile diamonds, that they carry an unlimited guarantee against tarnishing, loss of brilliancy, loss of stones or in any other form and that said jewelry is made of 14K gold or silver. In truth and in fact, the necklaces and other articles of jewelry sold and distributed by the respondents are not 14 carat gold or silver. Said articles of jewelry are not guaranteed to last a lifetime, or guaranteed not to tarnish, and the stones are not guaranteed against loss of brillancy. In fact, said jewelry is of a very cheap grade and quality and will tarnish immediately or within a very short time. By the use of the word facsimile as desscriptive of their diamonds, respondents represent that the various articles of jewelry sold and distributed by them are equipped with stones having a general appearance, quality, and brilliance possessed by diamonds and are of a quality and value greater than imitation diamonds. The jewelry sold and distributed by the respondents is not set with diamonds or facsimile diamonds and the purported stones do not have the same general appearance, quality, or brilliance possessed by genuine diamonds and are not of any better grade or quality than ordinary cheap imitations.

PAR. 4. Another and typical act and practice engaged in by the respondents in falsely representing their products and the terms and conditions under which said products are sold is the use of a purported coupon in their various advertising disseminated as aforesaid containing statements and representations with reference to the various conditions of the offer of sale. Among and typical of such statements and representations are the following:

SPECIAL

This certificate and 59¢ entitles the bearer to one of our genuine indestructible $3.00 vacuum filler sackless fountain pens. Introductory offer. This pen will be $3.00 after sale. Limit 3 pens to each customer.

This certificate is worth $4.41. This coupon and only 59¢ entitles bearer to one of our regular $5.00 cross necklaces. Limit 2 to a coupon. This offer made possible by the manufacturer. Limited supply for this special sale.

This coupon is worth $3.02. This coupon and $1.98 entitles the bearer to one of our regular $5.00 Electro Heat Kwick hot water disc as above described. Lim-

ited Supply at Introductory Price. Through special arrangement with the manufacturer we are able to offer for 2 days only a special advertising discount of $3.02 on each Electro Heat Kwick nationally advertised at $5.00. Note—due to limited supply only one to each coupon.

By means of the above representations and others similar thereto not specifically set out herein, the respondents represent both directly and indirectly that the customary and usual retail prices at which their various products are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate or coupon referred to is actually worth $4.41, $3.02, or $2.41 when offered as part payment of the purchase price of any specified article. By the same means the respondents represent that they are conducting a special or introductory offer and that the supply is limited to one, two, or three articles to each customer as specified in the advertisement.

In truth and in fact, the prices represented by the respondents as the customary retail prices of their products are, in fact, fictitious and greatly in excess of the prices at which said products are customarily offered for sale and sold by the respondents in the normal course of business. The respondents are not conducting an introductory or special offer and the certificate or coupon referred to in said advertisements does not have the value of $4.41, $3.02, or $2.41 as therein specified and do not have any value whatsoever as the price charged by the respondents in addition to the certificate or coupon is the regular customary prices at which respondents sell their products in the usual course of business. The respondents do not limit the number of articles which may be purchased by any customer but sell as many of such articles as the purchaser is willing to buy.

PAR. 5. Another and typical act and practice engaged in by the respondents in falsely representing their products are representations and statements made with reference to certain hot water heaters sold and distributed by the respondents known as Electro Heat Kwick Heaters. Typical of this practice is the use in their various advertisements disseminated as aforesaid of the statement: "Underwriters Laboratories seal of approval on the 8 ft. cord of every Electro Heat Kwick" and, in addition, the use of the insignia or seal bearing the words "Automotive Test Laboratories of America tested and approved Atla."

By this means the purchaser or prospective purchaser is led to believe that the entire electric hot water heater has been approved by the Underwriters Laboratory when, in truth and in fact, only the cord used for attaching respondents' heater to an electric outlet has

been approved by the Underwriters. By the use of the seal of the Automotive Test Laboratories of America the respondents represent that said product has been tested and approved by a duly qualified testing laboratory having facilities to make such tests and that a certificate of merit has been issued by such laboratory approving said product as being safe, sanitary, and speedy in action. In truth and in fact, the Automotive Test Laboratories of America has no official standing and lacks the facilities or laboratory necessary to make efficient tests of such a device. Furthermore, said product has been found to be unsafe for use by attaching to the ordinary household socket.

PAR. 6. The use by the respondents of the aforesaid acts and practices has had, and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondents have truthfully represented the quality, material, construction, durability, and other characteristics of their various products and the prices at which said products are sold. On account of this erroneous and mistaken belief a number of the purchasing public have been induced to purchase respondents' products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, 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 respondents, Robert H. Benson and Emma Benson, individually and as copartners trading as Benson Specialty Co., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of pens, jewelry, electric water heaters, or

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

1. Representing as the customary or regular price or value of respondents' products prices and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

2. Representing that the price at which respondents offer for sale and sell their various products constitutes a discount to the purchaser or is a special or introductory price when in fact such price is the usual and customary price at which the respondents sell such products in the normal and usual course of business.

3. Representing that any articles of merchandise customarily and regularly sold in connection with the use of any purported certificate or other similar device have any value in excess of the actual money price required to be paid.

4. Representing that any coupon or similar device has any monetary value in the purchase of an article which is customarily or regularly sold by the respondents with or without such coupon or similar device at the price required to be paid.

5. Representing that the fountain pens sold and distributed by respondents will last a lifetime, will never need repair, are unbreakable, or that such pens are "guaranteed."

6. Representing that respondents' necklaces can be worn a lifetime or any appreciable period of time and remain free from tarnish, loss of brilliancy, or loss of stones; or representing that such necklaces are set with "facsimile" diamonds or representing, by the use of any other language, that the settings in such necklaces are other than imitation stones.

7. Representing that the rings and necklaces sold and distributed by the respondents are 14 carat gold or silver or that they contain any substantial amount of gold or silver when such is not the fact.

8. Representing that respondents' electric hot water heaters or other products have been tested in any specific respect unless and until such products have actually been tested and approved by a duly qualified testing laboratory having the facilities necessary to make such tests.

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

WILLARD C. McAHREN AND MAUDE B. McAHREN, TRADING AS PURITY PRODUCTS COMPANY, AND LANDON & WARNER COMPANY

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

Docket 3847. Complaint, July 13, 1939—Decision, Nov. 15, 1939

Where two individuals engaged in distribution and sale, under name "Wheatol," of certain drug by them claimed to contain vitamin E, to members of purchasing public in various States and in the District of Columbia; in advertisements which they disseminated through the mails and through circulars and other printed matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of said "Wheatol"—

(*a*) Represented, directly and by implications, that impairment of youthful vigor, vitality, and general well-being in males up to and considerably over 50 years of age was due to an inadequate supply of vitamin E and could be averted or delayed by the use of "Wheatol" as source of vitamin E; and

(*b*) Represented that vitamin E had a direct effect upon the organs of reproduction and their functioning and that the absence, loss, or impairment of sexual desire, fertility, or vigor in both sexes, and, in the female, inability to bear children successfully after conception, were due to a deficiency of Vitamin E, and that such conditions would be corrected by use of said "Wheatol";

Facts being advancing years in the male result in a gradual impairment of youthful physical vigor, vitality, and general condition, such impairment is not due to deficiency of vitamin E and cannot be averted or delayed by use thereof or of "Wheatol," inability aforesaid in women is usually due to pathological conditions and anatomical abnormalities and not to deficiency in vitamin E, and such inability will not be remedied or corrected by use of "Wheatol," except in cases of rare occurrence where such inability may be due to deficiency of vitamin E of degree no greater than is susceptible of replacement by vitamin E content of said "Wheatol," existence of deficiency in such vitamin cannot be determined by layman solely from objective symptoms, but only by physicians after consideration of many factors, of which such symptoms are but one, and in other respects ailments and conditions aforesaid would not be corrected through use of said preparation or drug, which will not render potent or fertile those who are not;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and claims were true, and that said preparation possessed properties claimed and represented and would accomplish results indicated, and of causing such portion of said public, because of such belief, to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Randolph W. Branch for the Commission.

Mr. George Landon, of Chicago, Ill.; for Landon & Warner Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Willard C. McAhren and Maude B. McAhren, individuals, trading and doing business under the name of Purity Products Co., and Landon & Warner Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondents Willard C. and Maude B. McAhren and individuals trading and doing business under the name of Purity Products Co. and having an office and principal place of business at 801 Bluff Road, Sioux City, Iowa.

Respondent Landon & Warner Co. is a corporation, organized under the laws of the State of Illinois, and having an office and principal place of business at 360 North Michigan Avenue, Chicago, Ill.

PAR. 2. Respondents Willard C. and Maude B. McAhren, trading and doing business under the name of Purity Products Co., are now, and have been for more than 10 months last past, engaged in the business of distributing and selling a certain drug, as "drug" is defined in the Federal Trade Commission Act, known as "Wheatol," and claimed by respondents to contain Vitamin E. Respondents sell said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause such preparation, when sold, to be transported from their aforesaid place of business in the State of Iowa to purchasers located in the various States of the United States other than the State of Iowa and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

Respondent Landon & Warner Co. is and has been the advertising agent for the respondents Willard C. and Maude B. McAhren and

has participated in the preparation and dissemination of the advertising matter to which reference is hereinafter made.

PAR. 3. In the course and conduct of the business of respondents Willard C. and Maude B. McAhren, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said Wheatol by United States mails and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said Wheatol; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said Wheatol by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

As for men past fifty, they should still be in their full prime both mentally and physically.

DO NOT SLIP INTO PREMATURE OLD AGE! There are many * * * who feel themselves slipping into premature old age, their normal vigor and vitality so impaired they are no longer LIVING but EXISTING!

IT IS A NEW SCIENTIFIC DISCOVERY OF A VITAMIN WHICH IS CALLED THE "ANTI-STERILITY VITAMIN" * * * and it comes under the head of VITAMIN E and has to do with fertility, youthful vigor and all the other desirable things which we mortals covet! Various names have been applied to this new Vitamin E such as anti-sterility, fertility, etc., but * * * it should be called "THE VITAMIN OF GENERAL FITNESS."

Well, we are writing this letter to tell you of a new discovery called "Wheatol". It is one of the most potent sources known for VITAMIN E.

But they (Vitamins A, B, C, D and G) are not specifically devoted to the reproductive organs * * * as is our friend "VITAMIN E" * * *.

Recent biochemical research indicates that premature senescence (old age) *can be markedly delayed by adequate amounts of VITAMIN E.*

Deficiency of this "anti-sterility" vitamin produces sterility in both male and female. * * * It helps the proper development of the adolescent boy or girl; the man or woman needs it most of all during "middle life" and it helps the promotion of fertility and vigor far along into old age—for science has established Vitamin E deficiency as a definite entity through experimentation.

If your vitality is lowered; if you have a feeling of sluggishness and fatigue constantly; if life has lost its zest and zip; if you are without "pep" after a hard day's work in the office or home; if, when you see a romantic picture on the screen, you sigh for the thrill which is absent from your life, then by all means give

Wheatol a chance to come to your rescue—by supplying you with the needed Vitamin E. And when you have given this wonder-discovery a fair trial by taking as directed for one week, you will feel that it is the one thing to restore your old-time vim and vigor * * *.

And just what is VITAMIN E deficiency, do I hear you ask? Well, it has been established AS AN ACTUAL ENTITY in leading clinics and has to do with sterility; habitual abortion in females; sterility and impotence in males; proper development of the adolescent boy and girl; suckling paralysis in the infant; premature old age, and all such diseases as lack of VITAMIN E can produce. In fact, VITAMIN E is used from the cradle to the grave, and "WHEATOL," is representative, should be administered REGULARLY until such "deficiency" symptoms subsides. * * * Its use should be continual for some months after the symptoms have subsided to assure its complete subsidence.

PAR. 4. Through the use of the representations and statements hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body for which respondents recommend and have recommended the said Wheatol, the preparation itself and its effectiveness in the treatment of certain ailments and conditions, respondents directly and by implication, among other things, have represented that impairment of youthful vigor, vitality, and general well-being in males up to and considerably over 50 years of age is due to an inadequate supply of Vitamin E and can be averted or delayed by the use of Wheatol, which is a source of Vitamin E; that Vitamin E has a direct effect upon the organs of reproduction and their functioning and that the absence, loss, or impairment of sexual desire, fertility, or vigor in both sexes and, in the female, inability to bear children successfully after conception, are due to a deficiency of Vitamin E and will be engendered, restored, or renewed by the use of Wheatol.

PAR. 5. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, advancing years in the male result in a gradual impairment of youthful physical vigor, vitality, and general condition; this impairment is not due to a deficiency of Vitamin E and cannot be averted or delayed by the use of Vitamin E or Wheatol. Only in rare cases involving habitual involuntary abortion in women does Vitamin E deficiency affect the organs of reproduction or their functioning. Absence, loss, or impairment of sexual desire or impotency or sterility in either sex is not due to a deficiency of Vitamin E and will not be engendered, restored, or removed by the use of Wheatol. Women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical

abnormalities and not to a deficiency in Vitamin E, and will not be remedied or corrected by the use of Wheatol, except in cases of rare occurrence where such inability may be due to a deficiency of Vitamin E of a degree no greater than is susceptible of replacement by the Vitamin E content of Wheatol. The existence of a deficiency in Vitamin E cannot be determined by laymen solely from objective symptoms, but only by physicians after a consideration of many factors of which the objective symptoms are but one.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and claims disseminated as aforesaid, with respect to the said preparation and the causes of ailments and conditions of the human body for which respondents have recommended Wheatol, 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 and mistaken belief that such false statements, representations, and claims are true, that the said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the said preparation.

PAR. 7. The aforesaid acts and practices of said respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 13, 1939, issued, and thereafter served its complaint in this proceeding upon the respondents, Willard C. McAhren and Maude B. McAhren, individuals, trading and doing business under the name Purity Products Co., on July 15, 1939, and upon respondent Landon & Warner Co., a corporation, on July 14, 1939, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 26, 1939, respondents Willard C. and Maude B. McAhren filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to the facts. On July 31, 1939, respondent Landon & Warner Co. filed its answer denying participation in the preparation or dissemination of the advertising to which the complaint refers, and denying

knowledge as to all the other allegations of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and answers, and the Commission having duly considered the matter, and being now fully advised in the premises, finds this proceeding is in the interest of the public, and as to respondents Willard C. McAhren and Maude B. McAhren, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Willard C. and Maude B. McAhren are individuals trading and doing business under the name of Purity Products Co. and having an office and principal place of business at 801 Bluff Road, Sioux City, Iowa.

PAR. 2. Respondents Willard C. and Maude B. McAhren, trading and doing business under the name of Purity Products Co., are now, and have been for more than 1 year last past, engaged in the business of distributing and selling a certain drug, as "drug" is defined in the Federal Trade Commission Act, known as "Wheatol," and claimed by respondents to contain vitamin E. Respondents sell said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause such preparation, when sold, to be transported from their aforesaid place of business in the State of Iowa to purchasers located in the various States of the United States other than the State of Iowa and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said Wheatol by United States mails and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said Wheatol; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said Wheatol by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in com-

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

Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

As for men past fifty, they should still be in their full prime both mentally and physically.

DO NOT SLIP INTO PREMATURE OLD AGE!

There are many * * * who feel themselves slipping into premature old age, their normal vigor and vitality so impaired they are no longer LIVING but EXISTING!

IT IS A NEW SCIENTIFIC DISCOVERY OF A VITAMIN WHICH IS CALLED THE "ANTI-STERILITY VITAMIN" * * * and it comes under the head of VITAMIN E and has to do with fertility, youthful vigor and all the other desirable things which we mortals covet! Various names have been applied to this new Vitamin E such as anti-sterility, fertility, etc., but * * * it should be called "THE VITAMIN OF GENERAL FITNESS."

Well, we are writing this letter to tell you of a new discovery called "Wheatol."

It is one of the most potest sources known for VITAMIN E.

But they (Vitamins A, B, C, D and G) are not specifically devoted to the reproductive organs * * * as is our friend "VITAMIN E" * * *.

Recent biochemical research indicates that premature senescence (old age) *can be markedly delayed by adequate amounts of VITAMIN E.*

Deficiency of this "anti-sterility" vitamin produces sterility in both male and female. * * * It helps the proper development of the adolescent boy or girl; the man or woman needs it most of all during "middle life" and it helps the promotion of fertility and vigor far along into old age * * * for science has established Vitamin E deficiency as a definite entity through experimentation.

If your vitality is lowered; if you have a feeling of sluggishness and fatigue constantly; if life has lost its zest and zip; if you are without "pep" after a hard day's work in the office or home; if, when you see a romantic picture on the screen, you sigh for the thrill which is absent from your life, then by all means give Wheatol a chance to come to your rescue * * * by supplying you with the needed Vitamin E. And when you have given this wonder-discovery a fair trial by taking as directed for one week, you will feel that it is the one thing to restore your old-time vim and vigor * * *.

And just what is VITAMIN E deficiency, do I hear you ask? Well, it has been established AS AN ACTUAL ENTITY in leading clinics and has to do with sterility; habitual abortion in females; sterility and impotence in males; proper development of the adolescent boy and girl; suckling paralysis in the infant; premature old age, and all such diseases as lack of VITAMIN E can produce. In fact, VITAMIN E is used from the cradle to the grave, and "WHEATOL," its representative, should be administered REGULARLY until such "deficiency" symptoms subside. * * * Its use should be continual for some months after the symptoms have subsided to assure its complete subsidence.

PAR. 4. Through the use of the representations and statements hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments

and conditions of the human body for which respondents recommend and have recommended the said Wheatol, the preparation itself and its effectiveness in the treatment of certain ailments and conditions, respondents directly and by implication, among other things, have represented that impairment of youthful vigor, vitality and general well-being in males up to and considerably over fifty years of age is due to an inadequate supply of Vitamin E and can be averted or delayed by the use of Wheatol, which is a source of Vitamin E; that Vitamin E has a direct effect upon the organs of reproduction and their functioning and that the absence, loss or impairment of sexual desire, fertility or vigor in both sexes, and, in the female, inability to bear children successfully after conception, are due to a deficiency of Vitamin E and will be engendered, restored or removed by the use of Wheatol.

PAR. 5. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, advancing years in the male result in a gradual impairment of youthful physical vigor, vitality and general condition; this impairment is not due to a deficiency of vitamin E and cannot be averted or delayed by the use of Vitamin E or Wheatol. Only in rare cases involving habitual involuntary abortion in women does vitamin E deficiency affect the organs of reproduction or their functioning. Absence, loss or impairment of sexual desire or impotency or sterility in either sex is not due to a deficiency of vitamin E. Sexual desire, when absent, will not be engendered, or when lost or impaired, will not be restored by the use of Wheatol. The use of Wheatol will not render those who are impotent or sterile, potent or fertile. Women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical abnormalities and not to a deficiency in vitamin E, and will not be remedied or corrected by the use of Wheatol, except in cases of rare occurrence where such inability may be due to a deficiency of vitamin E of a degree no greater than is susceptible of replacement by the vitamin E content of Wheatol. The existence of a deficiency in vitamin E cannot be determined by laymen solely from objective symptoms, but only by physicians after a consideration of many factors of which the objective symptoms are but one.

PAR. 6. The use by respondents of the foregoing false, deceptive and misleading statements, representations and claims disseminated as aforesaid, with respect to the said preparation and the causes of ailments and conditions of the human body for which respondents have recommended Wheatol, 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 and mistaken belief that such false statements, representations, and claims are true, that the said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the said preparation.

CONCLUSION

The aforesaid acts and practices of said respondents, Willard C. McAhren and Maude B. McAhren, trading as Purity Products Co., as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, Willard C. and Maude B. McAhren, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearings as to the facts, and upon the answer of respondent Landon & Warner Co., and the Commission having made its findings as to the facts and conclusion that respondents Willard C. and Maude B. McAhren have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Willard C. McAhren and Maude B. McAhren, individually and trading under the name of Purity Products Co. or any other name or names, their agents, employees, and representatives, directly or through any corporate or other device, do forthwith cease and desist from disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a certain medicinal preparation containing vitamin E and now designated by the name of "Wheatol," or any other preparation composed of similar ingredients or possessing substantially similar therapeutic qualities, whether sold under that designation or any other designation, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is

defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that the impairment of youthful vigor, vitality and general condition which accompanies advancing years in the male is due to a deficiency in vitamin E; or that such impairment can be averted or delayed by the use of said preparation; or that said preparation will affect the female organs of reproduction or their functioning or women's ability to successfully conceive or bear children except in rare cases involving habitual involuntary abortion where inability to successfully bear children after conception may be due to a vitamin E deficiency of a degree susceptible of replacement by the vitamin E content of the said preparation; or that absence, loss or impairment of sexual desire or impotency or sterility is due to a deficiency of vitamin E, or that said preparation will in any way benefit such conditions.

It is further ordered, That the respondents Willard C. and Maude B. McAhren 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.

It is further ordered, That the case be closed as to respondent Landon & Warner Company without prejudice to the right of the Commission to reopen and resume prosecution thereof in the event the facts so warrant.

IN THE MATTER OF

STANDARD TOYKRAFT 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 3876. Complaint, Aug. 25, 1939—Decision, Nov. 15, 1939

Where a corporation engaged in sale and distribution of toys and playthings to retailers and other purchasers for resale to members of purchasing public—

Represented to members of purchasing public situated in various States and in the District of Columbia, that its toy sets were wholly made in the United States, through inserting on containers thereof such legends as "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A.," and through use of other representations of similar import and meaning, notwithstanding fact its said toy sets were not toys or playthings wholly made in the United States, such as purchased to the exclusion of those made in whole or in part in foreign countries by substantial number of members of purchasing public, by reason of their preference for many years for toys and playthings wholly made in the United States over those made in whole or in part in foreign country, but substantial portion of units comprising said sets had been made in Japan and purchased by it from importers and thereafter assembled into sets and sold and distributed as aforesaid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such toys and playthings thus represented were wholly manufactured in the United States, and of thereby causing said portion of such public, to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Milton Strasburger, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Standard Toykraft Products, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Standard Toykraft Products, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business and factory located at 319–327 McKibbin Street, Brooklyn, N. Y. Respondent is now, and has been for several years last past, engaged in the sale and distribution of toys and playthings. Respondent sells and distributes such merchandise to retailers and other purchasers thereof for resale to members of the purchasing public.

In the course and conduct of its business respondent causes said toys and playthings, when sold, to be transported from its place of business in the State of New York, to purchasers thereof at their respective points of location in various States of the United States, other than in the State of New York, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent causes, and has caused, to be inserted on the containers of certain of its toy sets the following statement and representation: "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A." Through the use of the aforesaid statement and representation and others of similar import or meaning not herein set out, the respondent represents to members of the purchasing public situated in various States of the United States and in the District of Columbia that the aforesaid toy sets are wholly manufactured in the United States.

PAR. 3. In truth and in fact said toy sets are not wholly manufactured in the United States. A substantial portion of the units comprising said toy sets are manufactured in Japan and are purchased by the respondent from importers. Subsequent to the purchase by the respondent of said units, made in Japan, the respondent assembles the units into toy sets and sells and distributes such sets as aforesaid.

PAR. 4. A substantial number of members of the purchasing public have had for many years, and now have, a preference for toys and playthings which are wholly manufactured in the United States over toys and playthings which are manufactured in whole or in part in a foreign country. As a result of this preference a substantial number of the purchasing public have purchased substantial quantities of toys and playthings wholly manufactured in the United States and have refrained from purchasing toys and playthings manufactured in whole or in part in foreign countries.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations 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 and mistaken belief that the said toys represented as aforesaid by respondent, were wholly manufactured in the United States and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said toys.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Commission on August 25, 1939, issued and served its complaint in this proceeding upon the respondent, Standard Toykraft Products, Inc., charging it with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of the 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, 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, Standard Toykraft Products, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business and factory located at 319–327 McKibbin Street, Brooklyn, N. Y. Respondent is now, and has been for several years last past, engaged in the sale and distribution of toys and playthings. Respondent sells and distributes such merchandise to retailers and other purchasers thereof for resale to members of the purchasing public. In

the course and conduct of its business respondent causes said toys and playthings, when sold, to be transported from its place of business in the State of New York, to purchasers thereof at their respective points of location in various States of the United States, other than in the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent causes, and has caused, to be inserted on the containers of certain of its toy sets the following statement and respresentation: "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A." Through the use of the aforesaid statement and representation and others of similar import or meaning not herein set out, the respondent represents to members of the purchasing public situated in various States of the United States and in the District of Columbia that the aforesaid toy sets are wholly manufactured in the United States.

PAR. 3. In truth and in fact said toy sets are not wholly manufactured in the United States. A substantial portion of the units comprising said toy sets are manufactured in Japan and are purchased by the respondent from importers. Subsequent to the purchase by the respondent of said units, made in Japan, the respondent assembles the units into toy sets and sells and distributes such sets as aforesaid.

PAR. 4. A substantial number of members of the purchasing public have had for many years, and now have, a preference for toys and playthings which are wholly manufactured in the United States over toys and playthings which are manufactured in whole or in part in a foreign country. As a result of this preference a substantial number of the purchasing public have purchased substantial quantities of toys and playthings wholly manufactured in the United States and have refrained from purchasing toys and playthings manufactured in whole or in part in foreign countries.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations 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 and mistaken belief that the said toys represented as aforesaid by respondent, were wholly manufactured in the United States and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said toys.

CONCLUSION

The aforesaid acts and practices of respondent as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, Standard Toykraft Products, Inc., its officers, represenatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, and sale and distribution of toys and playthings in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing that any toys, any substantial or material part or portion of which are manufactured in Japan or any other foreign country, are manufactured in the United States.

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

WALDES KOH-I-NOOR, INC., AND THE GREY ADVERTISING AGENCY, INC.

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

Docket 3269. Complaint, Nov. 20, 1937—Decision, Nov. 16, 1939

Where a corporation engaged in manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners, and, on occasions and as means of promoting sale and distribution of its said products, in causing ladies' handbags, in which were included certain of its fastening devices, to be made and offered and sold in commerce among the various States; and a corporate advertising agency which had been long engaged as such in sale of advertising, advertising copy, mats, cuts, and sales stimulation and merchandising plans and similar material, and which functioned for said manufacturing company as its representative with respect to acts and practices below set forth, and in publication of advertisements in question, and in promoting sale and distribution of products made by or at instance of said manufacturing corporation, and including ladies' handbags in which were incorporated said manufacturer's "Kover-Zip" slide fastener or zipper; and, as thus engaged, in causing said zippers and handbags and mats, cuts, and advertising materials relating and referring thereto, to be offered, sold, and transported to prospective purchasers and purchasers in various other States and in the District of Columbia, in substantial competition with others offering, selling, and distributing in commerce ladies' handbags and other like or similar products of kind above described;

In pursuing and carrying out certain advertising and sales programs promotional of sale and distribution in various States of ladies' handbags or purses equipped with zippers and "Kover-Zips" of said manufacturer, which promotional sales plans had been laid out and executed by said advertising agency for said manufacturer and were financed by latter, and under which they (1) purchased from various couturiers in France number of ladies' handbags, designed and made by said couturiers, costing various prices ranging from $11.38 to $22.75, and representing, in case of each, one particular design only, (2) imported 32 of such bags, costs of which, after importation and payment of customs duties and other charges, were thereby increased and ranged from $15.86 to $31.21 per bag, (3) distributed among certain handbag manufacturers in the United States, for copying as to design and style and for production in commerce in quantity, to sell at prices ranging from $2.95 to $3.50, said handbags, and (4) caused 24 of said imported French-made bags to be illustrated in page advertisements in issues of fashion magazine of wide circulation in and throughout the several States and in said District, and to be there represented at retail prices ranging from $35 to $88 and $95, for the purpose of creating price basis and promotional background for subsequent advertisement and sale of their American-made style copies of said bags, and for advertisement and sale thereof by retailers to members of buying public and not for

purpose of inducing purchase of the originals therein depicted, which were, in fact, not offered or sold to retailer or other selling channels or at prices as aforesaid—

(*a*) Represented, in certain other advertising and sales promotion letters and literature, in which they offered and sold their American and domestic made ladies' handbags, and in which various advertising material they included facsimile copies of the aforesaid advertisements in said fashion magazine, and in advertising copy and sales promotion programs laid out and provided for sale and distribution of their said domestic-made handbags by retailers, that "For this 'Paris promotion'" said manufacturer had "sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for $2.95," and that they were "Identical! Even to Invisible Kover-Zip Slide Fasteners!" and that their said handbags were, among other things, "EXACT COPIES OF PARIS BAGS As headlined in Vogue $35 to $80" and "Identical Facsimiles" and "* * * so faithful in every detail that the designers permitted their own labels to be used in them," and "Identical Copies of Expensive Paris Originals" and "Authentic and Identical Copies of Paris Bags at $2.95" with "strong appeal to the woman who buys fashion," and advised reader that advertisement in said fashion magazine was purely "merchandising device" to enable "you to authenticate and substantiate your claim of the copied bags being identical in every detail to the high-priced"; and

(*b*) Caused said various advertising and sales promotion letters and literature, with statements and representations therein as above set forth and indicated, to be circulated and distributed to certain department stores and other retail sellers of ladies' handbags in and throughout the various States and in said District, by whom their said American and domestic-made ladies' handbags, as consequence of aforesaid sales promotion program, etc., were advertised for sale by reference to said fashion magazine advertisements and by use of facsimile copies thereof, and through widely employing advertising copy supplied by said manufacturer and advertising agency, as "Authentic Copies," "Identical Copies," "Identical Facsimilies," "Exact Copies," and "Exact Reproductions" of said imported French-made handbags;

Facts being their said domestic products were not in all particulars true copies of French-made handbags which, as designed and made in France, and especially in Paris, and imported therefrom into the United States, command, among purchasers in latter country, a special and favorable reputation for high quality and value in matters of design, style, materials, and workmanship, and true copies of which are readily salable and in demand among purchasers of such products in and throughout the United States by reason of such reputation, but said domestic ladies' handbags, as actually offered and sold by them in course of their said business and in course of their said sales promotion programs as above described and referred to, were copies of the French-made bags in matters of style and design only, and in matters of ornament, materials, and workmanship were substantially cheaper and inferior in quality and value to the French-made handbags in question, and which did not command the retail values or prices represented in said fashion periodical advertisements, or command retail values or prices of more than about one-half of those there represented;

With capacity and tendency, through aforesaid acts and practices in advertising, illustrating, and pricing imported French-made ladies' handbags in magazine or publication circulating to members of the buying public, and in referring thereto and causing same to be referred to by retailers in connection with offer, etc., of their domestic-made ladies' bags equipped with said manufacturer's fastening devices, and in representing and causing said domestic bags to be represented as "Authentic Copies," etc., of such imported products, to mislead and deceive members of buying public and purchasers of such domestic-made bags into false and erroneous belief that the imported products in question were actually offered and sold in retail selling channels and at prices represented, and that said domestic bags were true copies, and in all particulars, including design, style, etc., of said imported products and comparable and equal in quality and value thereto, and into purchase of said domestic products in reliance upon such erroneous belief, and with result, as consequence, of unfairly diverting trade in commerce in domestic-made ladies' handbags and fastening devices therefor to them from their competitors engaged in offer and sale of such bags or devices:

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. Edward E. Reardon*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Karelsen & Karelsen, of New York City, for Waldes Koh-I-Noor, Inc.

Mr. George J. Beldock, of New York City, for Grey Advertising Agency, 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 Waldes Koh-I-Noor, Inc., a corporation, and The Grey Advertising Agency, Inc., a corporation, hereinafter designated as respondents, 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, Waldes Koh-I-Noor, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 47–52 Twenty-Seventh Street, Long Island City, N. Y., in said State of New York.

Respondent, The Grey Advertising Agency, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 128 West Thirty-first Street, New York, in said State of New York.

PAR. 2. Respondent, Waldes Koh-I-Noor, Inc., for a long time last past has been, and now is, engaged in the manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners, and on occasions such as hereinafter described has participated in the manufacture and sale of ladies' handbags in commerce among and between the various States of the United States. One of the devices regularly manufactured by it is a slide fastener or zipper which it terms the "Kover-Zip." These zippers were prominently featured in connection with the advertisement and sale of the handbags in the sales plan hereinafter described.

Respondent, The Grey Advertising Agency, Inc., for a long time last past has been, and now is, engaged in the operation of an advertising agency and in the sale of advertising, advertising copy, mats, cuts, sales stimulation, and merchandising plans and similar material. It functions for respondent Waldes Koh-I-Noor, Inc., as its representative with respect to the acts and practices herein charged and specifically in the publication of the advertisements hereinafter referred to, and in promoting the sale and distribution of the products manufactured by or at the instance of the said Waldes Koh-I-Noor, Inc., including the ladies' handbags herein referred to, in commerce among and between the various States of the United States.

PAR. 3. Respondents, engaged in business as aforesaid, cause, or participate in causing, said zippers, purses, handbags, mats, cuts, advertising plans and material to be transported, when sold, from the place of manufacture or from their principal places of business in the State of New York into and across the various States of the United States, to the respective purchasers thereof located at various places in States other than the States wherein said products are manufactured or said shipments originate, and in the District of Columbia. At all times referred to herein respondents have maintained, or aided, assisted and promoted, a constant current of trade and commerce in said products, advertising and sales plans so sold or promoted by them between and among the various States of the United States and in the District of Columbia.

Other corporations, firms, partnerships, and persons have been and are engaged in offering for sale, selling, and promoting the sale of competitive purses and other products as hereinabove described in commerce between and among the various States of the United States. Respondents are engaged in substantial competition with such other corporations, firms, partnerships, and persons in promoting the sale, sale and distribution of purses, zippers, handbags, and other products hereinbefore described, in such commerce.

PAR. 4. In promoting and offering for sale and selling its said zippers, ladies' handbags, and other products, the respondent, Waldes Koh-I-Noor, Inc., acting directly and through The Grey Advertising Agency, Inc., purchased in Paris, France, about 25 genuine French designed and manufactured ladies' handbags or purses of various designs and styles for use in copying and production of domestic bags in the United States. These imported purses cost varying prices, from $12.68 to $22.75 each (allowing 6½ cents as the rate of exchange for the French franc), which, plus duty at 35%, raises the cost thereof to the said respondents various sums ranging from $17.11 to $30.71 each. These bags, although purchased only as samples and not for the purpose of sale, were advertised by respondents in the nationally known and circulated magazine "Vogue," published by Conde Nast Publications, Inc., in a manner calculated to indicate and to represent they were, or had been, offered for sale to the purchasing public of the United States at retail at prices ranging from $35 to $80 each.

The handbags so imported by the respondents into the United States were distributed among various handbag manufacturers, who reproduced the same in commercial quantities along the same general design and with the same general appearance as the originals but without using the same kind or quality of materials and with other differences.

Thereafter, the said "Vogue" advertisements showing these false and fictitious retail values were featured in practically all advertisements and promotional literature published either directly by the respondents or by retailers at their behest, announcing the sale of the domestic reproductions. The deception created by this false comparison of domestic purses, which generally sold to the public at retail for $2.95, with high-priced imported purses, which were advertised for sale but never sold or offered for sale, was furthered and emphasized by displays of the "Vogue" advertisements reproduced in large size for use in shop windows together with the domestic bags. The bags so manufactured and distributed in commerce as herein described as reproductions of the imported bags at the instance and cooperation of respondents, were all equipped with the zippers manufactured by the respondent, Waldes Koh-I-Noor, Inc. The sale to retailers of the said domestic bags was accomplished on orders taken by respondents or on orders sent direct to the factories therefor, at the option of the retailer, all as duly explained in the sales plans and order blanks transmitted by respondents to said retailers.

PAR. 5. In the course and conduct of their business as hereinabove described, the respondents, Waldes Koh-I-Noor, Inc., and The Grey

Advertising Agency, Inc., acting concertedly and in cooperation with each other, in promoting the sale of and selling the slide fasteners and domestic purses hereinabove described, published, or aided and assisted in publishing, advertisements promoting the sale of these articles in newspapers and magazines of wide circulation, and caused copies of sample advertisement cuts, mats, and sales plans, descriptive of and elaborating on their promotional plans, to be distributed to retailers for similar use. These sales plans and suggested advertisements so furnished retailers by the respondents were widely adopted, used, and published, either in whole or in part, by retail merchants in all parts of the United States to assist in the sale of the said domestic purses. By the aforesaid means, the respondents herein make, and have made, representations, among others, such as the following:

For this "Paris promotion" the Waldes Company sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for $2.95.

$2.95
Identical!
Even to Invisible
KOVER-ZIP Slide Fasteners!

As Seen in Vogue
A Sensational Offering of
Authentic Copies

EXACT COPIES OF PARIS
BAGS
As headlined in Vogue
$35 to $80

Identical
Even to Invisible
KOVER-ZIP

Our copies are so faithful in every detail that the designers permitted their own labels to be used in them.

Couturiers Original Bags
$32.50 to $95
Our identical copies

Identical Copies of Expensive Paris Originals.

Authentic and Identical Copies of Paris Bags
at $2.95
have a strong appeal to the woman who buys fashion.

The Vogue advertisement is purely a merchandising device which enables you to authenticate and substantiate your claim to the copied bags being identical in every detail to the high-priced.

By this means and through these representations the public is, and has been, led to believe that the domestic purses so manufactured as above described, and retailed for $2.95 or thereabouts, are identical copies of imported handbags regularly sold at retail in the United States at prices ranging from $32.50 to $80, and in some instances as high as $95.00.

In truth and in fact, the said imported bags so illustrated and advertised were never sold or offered for sale to the purchasing and consuming public in the United States, and had no actual retail value or price whatsoever. The said advertisements appearing in the magazine "Vogue" were a pure subterfuge or device calculated and intended by the respondents to give the domestic bags so produced in imitation of the imported bags a false and fictitious value by virtue of the false comparison, thus creating a preference and exceptional demand therefor on the part of the purchasing public. Handbags identical or similar to those imported by the respondents do not have a regular retail sales price or value of from $35.00 to $80.00. On the contrary, such bags are regularly sold at retail at prices far below those figures. Said domestic bags are not authentic copies, identical facsimiles, exact reproductions or copies of said imported bags, but are made from materials far cheaper and inferior thereto and differ therefrom in other respects.

PAR. 6. There are among the competitors of respondents, other corporations, firms, partnerships, and individuals who sell or promote the sale of handbags, slide fasteners, zippers, sales plans, advertising, and advertising matter and other products, as hereinabove described, in interstate commerce, who do not in any manner misrepresent the character, quality, or value of their respective products, or of products the sale of which is advertised and promoted by them, or engage in practices similar to those hereinabove detailed.

PAR. 7. The acts and practices of respondents in falsely representing and advertising their products, or the products advertised and promoted by them, in the manner hereinabove set out, are calculated to mislead and deceive, and have the capacity and tendency to, and do, mislead and deceive, a substantial portion of the purchasing and

consuming public into the erroneous belief that all of said representations are true and into the purchase of the bags and zippers, or combinations thereof, sold, promoted or advertised by the respondents, in reliance upon the truthfulness of said representations. The respondents have also placed in the hands of wholesalers, jobbers and retailers the means of making false and misleading representations, as above described, to the purchasing and consuming public, by which means all, or some of them, have increased their own sales of ladies' handbags so advertised and represented, thereby lessening the market for similar goods sold by other manufacturers, merchants or dealers, the true value, grade, quality and nature of which is honestly stated.

As a result thereof, trade is unfairly diverted to respondents from competitors engaged in the advertisement, promotion and sale in commerce as herein defined, of similar ladies' handbags, zippers, and other products, who truthfully represent the value, nature, and quality of their respective products. Further, substantial injury has been and is now being done by respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of 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 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 20th day of November 1937, issued and served its complaint in this proceeding upon respondents, Waldes Koh-I-Noor, Inc., a corporation, and The Grey Advertising Agency, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 4, 1938, respondents filed their separate answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and their counsel, Max J. Rubin for respondent Waldes Koh-I-Noor, Inc., and George Beldock for respondent The Grey Advertising Agency, Inc., and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the ap-

proval 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 said Commission may proceed upon said statements 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, answers and stipulation, said stipulation having been approved, accepted and filed, 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, Waldes Koh-I-Noor, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 47–52 Twenty-seventh Street, Long Island City, N. Y., in said State of New York.

Respondent, The Grey Advertising Agency, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 128 West Thirty-first Street, New York, in said State of New York.

PAR. 2. Respondent, Waldes Koh-I-Noor, Inc., for more than 3 years last past has been, and now is, engaged in the manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners. As a means of promoting the sale and distribution of said products, respondent on occasions, such as hereinafter described, has caused and causes ladies' handbags, which include certain of said products, to be manufactured, offered for sale, and sold in commerce among and between the various States of the United States. One of the devices regularly manufactured by respondent is a slide fastener or zipper, which is termed "Kover-Zip." These zippers have been and are prominently featured in connection with the advertisement and sale of the ladies' handbags hereinafter described.

Respondent, The Grey Advertising Agency, Inc., for a long time last past has been, and now is, engaged in the operation of an advertising agency and in the sale of advertising, advertising copy, mats, cuts, sales stimulation and merchandising plans and similar material. It functions for respondent Waldes Koh-I-Noor, Inc., as its repre-

sentative with respect to the acts and practices herein charged and specifically in the publication of the advertisements hereinafter referred to, and in promoting the sale and distribution of the products manufactured by or at the instance of the said Waldes Koh-I-Noor, Inc., including the ladies' handbags herein referred to in commerce among and between the various States of the United States.

PAR. 3. Respondents, engaged in the business aforesaid, have caused and cause said zippers, and handbags, and mats, cuts, and advertising materials, relating and referring to said zippers and handbags, to be offered for sale, sold, and transported from the State of New York to prospective purchasers and purchasers located in various States other than the State of New York and in the District of Columbia. At all times referred to herein respondents have maintained, or aided, assisted, and promoted, a constant current of trade and commerce in said products among and between the various States of the United States and in the District of Columbia.

Other corporations, firms, partnerships, and individuals have been and are engaged in the business of offering for sale, selling, and distributing ladies' handbags, and other like or similar products of the kind hereinabove described in commerce among and between the various States of the United States and in the District of Columbia. Respondents have been and are substantially engaged in competition with such other corporations, firms, partnerships, and individuals in offering for sale, selling, and distributing said products in such commerce.

PAR. 4. During the spring and fall of the year 1936, and at various times thereafter, respondents engaged in certain advertising and sales programs promotional of the sale and distribution, in various States of the United States, of ladies' handbags or purses, combined and equipped with, and inclusive of, the fastener products of respondent Waldes Koh-I-Noor, Inc. Said fasteners are otherwise known as "zippers" and more particularly as "Kover-Zips." The plans for these promotional sales were laid out and executed by respondent The Grey Advertising Agency, Inc. for respondent Waldes Koh-I-Noor, Inc., and were financed by the said latter company. In connection therewith respondents purchased a number of ladies' handbags designed and manufactured by various couturiers in France. Only one bag of each particular design was purchased. The said bags cost varying prices, ranging from $11.38 (175 francs) to $22.75 (350 francs), allowing $.06½ per franc, the rate of exchange for the French franc at the time of purchase. The said handbags were then imported by respondents into the United States from France. The payment of customs duties at 35% raised the cost thereof to respond-

ents to sums ranging from $15.36 to $30.71 per bag. Thirty-two such bags were imported. Cases and packing charges at 70.60 francs, insurance at 79.50 francs, and Consular fees and expenses at 43.75 francs, totaling 193.95 francs, plus delivery charges after import, raised the cost to respondents for each bag by $0.50, more particularly, to sums ranging from $15.86 to $31.21 per handbag. The said handbags were then distributed among certain handbag manufacturers in the United States for copying as to design and style and for production in commercial quantities to sell at prices ranging from $2.95 to $3.50. Pursuant to the aforesaid sales promotional programs, respondent then caused 24 of the said imported French-made bags to be illustrated in page advertisements appearing in March and September issues of Vogue, a magazine having a wide circulation in and throughout the several States of the United States and in the District of Columbia, and in said advertisements caused the said French-made bags to be represented at retail prices ranging from $35 to $80 and $95.

The purpose of the aforesaid Vogue advertisements was to create a price basis and promotional background for subsequent advertising and sale of respondents' American-made style-copies of the said French-made handbags and for the advertising and sale thereof by retailers to members of the buying public. The said advertisements were not for the purpose of inducing the purchase of the original French-made handbags therein pictured, and the said originals therein illustrated were not in fact offered for sale or sold to retailer or other selling channels or at prices ranging from $35 to $80 and $95. Ladies' French-made and imported handbags, of the same quality, design, style and material, as the bags purchased by respondents in France and illustrated in the said Vogue advertisements, when and where offered for sale and sold through retail selling channels in the United States, did not and do not command the retail values or prices represented in said advertisements, and did not and do not command retail values or prices of more than about one-half of the values or prices represented in said advertisements.

PAR. 5. Thereafter, pursuant to the aforesaid sales promotion program, respondents caused certain other advertising and sales promotion letters and literature to be circulated and distributed to certain department stores and other retail sellers of ladies' handbags in and throughout the various States of the United States and in the District of Columbia, in which respondents offered for sale their American and domestic-made ladies' handbags, and in which respondents referred to and included facsimile copies of the aforesaid advertisements as the same appeared in Vogue magazine, and otherwise laid out and provided advertising copy and sales promotion programs

for the sale and distribution of respondents' said domestic-made handbags by said retailers. Demonstrative of the statements and representations, among others, made by respondents in the said advertising and sales promotion, letters and literature, are the following:

For this "Paris promotion" the Waldes Company sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for $2.95.

$2.95
Identical!
Even to Invisible
KOVER-ZIP Slide Fasteners!

As Seen in Vogue
A Sensational Offering of
Authentic Copies

EXACT COPIES OF PARIS
B A G S
As headlined in Vogue
$35 to $80

Identical Facsimiles.

Exact Reproductions

Our copies are so faithful in every detail that the designers permitted their own labels to be used in them.

Couturiers Original Bags
$32.50 to $95
Our identical copies

Identical Copies of Expensive Paris Originals.

Authentic and Identical Copies of Paris Bags at $2.95 have a strong appeal to the woman who buys fashion.

The Vogue advertisment is purely a merchandising device which enables you to authenticate and substantiate your claim of the copied bags being identical in every detail to the high-priced.

As a consequence of the aforesaid sales promotion program and of the statements and representations made by respondent in the aforesaid sales promotion letters and literature, retailers of respondents' said products, in and throughout the United States and in the District of Columbia, advertised said products for sale by reference to said Vogue advertisements and by use of facsimile copies thereof and widely employed the advertising copy supplied by respondents and therein represented the said domestic-made handbags as "Au-

thentic Copies," "Identical Copies," "Identical Facsimilies," "Exact Copies," and as "Exact Reproductions" of the aforesaid imported French-made handbags.

PAR. 6. Ladies' handbags which are designed and made in France, especially Paris, France, and imported into the United States, have heretofore commanded, and now command, among purchasers of ladies' handbags in the United States, a special and favorable reputation for high quality and value in matters of design, style, materials, and workmanship, and true copies of such handbags are readily salable and in demand among purchasers of ladies' handbags in and throughout the United States by virtue of said reputation. The unqualified word "copy," and such words as "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," and "Exact Reproductions," when used to describe domestic-made ladies' handbags by reference to French-made ladies' handbags, imply and represent, and induce members of the buying public to believe, that said domestic-made handbags are true copies of, and in all particulars are comparable and equal in quality and value to said French-made ladies' handbags.

PAR. 7. Respondents' said handbags were not and are not in all particulars true copies of French-made handbags, and were not and are not "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," or "Exact Reproductions," of the French-made ladies' handbags herein referred to. The ladies' handbags actually offered for sale and sold by respondents in the course of their said business and in the course of said sales promotion programs, all as hereinbefore described and referred to, were and are copies of French-made handbags in matters of style and design only. In matters of ornament, materials and workmanship, respondents' said handbags were and are substantially cheaper and inferior in quality and value to that of the said French-made handbags.

PAR. 8. Respondents' aforesaid acts and practices of advertising, illustrating, and pricing of imported French-made ladies' handbags in a magazine or publication having a circulation to members of the buying public in and among the various States of the United States, and in the District of Columbia, and in referring to the same, and causing the same to be referred to by retailer sellers, in connection with the offering for sale and sale of domestic-made ladies' handbags, equipped with fastening devices of respondent Waldes Koh-I-Noor, Inc., and in representing and causing said domestic-made ladies handbags to be represented as "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," "Exact Reproductions," or as "Copies" of such imported French-made ladies' hand-

bags, has had and has the capacity and tendency to mislead and deceive members of the buying public and purchasers of such domestic-made ladies' handbags into the false and erroneous belief that such imported French-made ladies' handbags were and are actually offered for sale and sold in retail selling channels and at the prices so represented and that the said domestic-made ladies' handbags are true copies of, and in all particulars, inclusive of design, style, materials, ornaments, and workmanship, comparable and equal in quality and value to, such imported French-made ladies' handbags, and thus into the purchase of said domestic-made handbags in reliance upon such erroneous belief. In consequence thereof, trade and commerce in domestic-made ladies' handbags and fastening devices therefor has been and is unfairly diverted to respondents from their said competitors engaged in the business of offering for sale and selling ladies' handbags or fastening devices therefor.

CONCLUSION

The aforesaid acts and practices of respondents, Waldes Koh-I-Noor, Inc., and The Grey Advertising Agency, 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, the answers of respondents, and a stipulation as to the facts entered into between respondents herein and W. T. Kelley, Chief Counsel of the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon 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 the Federal Trade Commission Act.

It is ordered, That the respondents Waldes Koh-I-Noor, Inc., and The Grey Advertising Agency, Inc., corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of ladies' handbags or any other article of merchandise fitted or equipped with any fastening device sold by re-

spondents Waldes Koh-I-Noor, Inc., in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, or causing, or inducing others to represent, that any imported French-made ladies' handbag has been or is regularly offered for sale and sold through retail channels, when such is not the fact, or that such handbag has been or is offered for sale and sold at a retail price for which the same has not been or is not regularly offered for sale and sold.

2. Representing, or causing or inducing others to represent, that any imported French-made ladies' handbag has a value which in fact such handbag does not have.

3. Representing, or causing or inducing others to represent, that any domestic-made ladies' handbags are "Copies," "Reproductions," or "Facsimiles," of any imported ladies' handbags, French-made or otherwise, unless such domestic-made handbags are true copies, reproductions, or facsimiles of, and in all particulars, inclusive of design, style, materials, ornament, and workmanship, comparable and equal in quality to, the imported handbags of which the domestic-made handbags are, or purport to be, copies, reproductions, or facsimiles.

It is further ordered, That said respondents do forthwith cease and desist from distributing any advertising matter in said commerce which contains any of the aforesaid representations for use in connection with the promotion of the sale of any such article.

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

AMERICAN CLINICAL LABORATORIES, INC., OFFICIAL RESEARCH BUREAU OF NEW YORK, INC., FEDERAL RESEARCH CORPORATION, AND SHELLEY BRAVERMAN

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

Docket 3415. Complaint, May 10, 1938—Decision, Nov. 16, 1939

Where two corporations respectively engaged, as American Clinical Laboratories, Inc., and Federal Research Corporation, in sale and distribution of medicinal preparation designated "Retardo" for reduction of weight, and acting under direction and control of an individual who owned majority of the stock thereof; in advertising said preparation through newspapers, periodicals, bulletins and publications of general circulation among the various States, and through radio continuities broadcast from stations of extra-state audience—

(*a*) Represented that said preparation afforded safe, competent, effective and reliable method of treatment for losing weight, which would accomplish such result without dieting or exercise, and constituted newest discovery for such purpose and contained no dangerous drugs, facts being it was not a safe method for losing substantial amount of weight, but contained, in substantial amount, boric acid, which had potential toxic properties and was cumulative in action if taken in daily or frequent doses, and would result, if taken according to their directions, in manifest toxic effects to large number of users, it was not newest discovery for treatment of excess weight, only competent, reliable, safe and effective method for treating which is proper exercise and diet, and it did contain a harmful or dangerous drug in boric acid content thereof as aforesaid, and had no substantial therapeutic value as remedy or cure for, or treatment of, obesity, and said statements and representations made relative thereto were grossly inaccurate, incorrect and exaggerated, and not true statements of therapeutic value of product in question; and

Where said corporation first referred to—

(*b*) Represented to members of purchasing public, through use of word "Laboratories" as part of its corporate name, that it was manufacturer or compounder of said "Retardo," facts being it purchased said preparation from the manufacturer or compounder thereof and acted as middleman in distributing said product in commerce as aforesaid, and was not manufacturer, for the purchase of the products of which direct there is preference on part of substantial number of members of purchasing public as eliminating, in their belief, profit of so-called middleman and securing substantial financial saving and various other advantages; and

Where said corporation last referred to, and third corporation, name of which was "Official Research Bureau of New York, Inc.," and stock of which was owned entirely by individual aforesaid, who directed and controlled its

activities and policies, along with those of other two, with respect to acts and practices here in question—

(c) Represented, in various of the advertisements aforesaid of said "Retardo," that such product had been "Approved by the Official Research Bureau of New York," and reproduced or caused to be reproduced, in various of their advertisements, seal on which was inserted words "Seal of Approval, Official Research Bureau of New York," and thus that product in question had been approved by research bureau having an official connection with city or State of New York, facts being it had not been thus approved and corporation in question and last referred to had no official connection with said city or State;

With effect of confusing, misleading and deceiving members of purchasing public into erroneous and mistaken beliefs, through such statements and representations, that product in question was remedy or competent, safe and adequate treatment for ailments for which recommended and advertised as aforesaid and had been approved by research bureau with official connection with said city or State, and that corporation aforesaid was manufacturer or compounder thereof, and into purchase of said preparation because of erroneous and mistaken beliefs thus engendered, and of thereby unfairly diverting trade to said corporations first referred to from competitors engaged in sale and distribution of similar products or preparations designed and intended for similar use in treating ailments for which said "Retardo" was recommended, and who truthfully represent ingredients, safety and effectiveness of their respective products and their own business status with respect to being manufacturers or having any official connection with any State or local governmental bureaus, and with result that injury was thereby done by three corporations aforesaid and by individual in question, who directed and controlled them in such acts and practices, to competition in commerce among the various States:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John R. Phillips, Jr. for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that American Clinical Laboratories, Inc., Official Research Bureau of New York, Inc., and Federal Research Corporation, corporations, and Shelley Braverman, an individual, hereinafter referred to as respondents, have violated the provisions of the 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 respondents American Clinical Laboratories, Inc., Official Research Bureau of New York, Inc., and Federal Research Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, and having their respective offices and principal places of business at 149–50 Roosevelt Avenue, in the Borough of Queens, in the city and State of New York. The respondent Shelley Braverman is an individual, and has his office and place of business at 149–50 Roosevelt Avenue, in the Borough of Queens, in the city and State of New York. Respondent Shelley Braverman owns the majority of the stock in respondent American Clinical Laboratories, Inc., and respondent Federal Research Corporation, and owns all the stock in respondent Official Research Bureau of New York, Inc., and directs and controls the sales activities and policies of said respondents with respect to the acts and practices herein set forth.

PAR. 2. The respondents American Clinical Laboratories, Inc., and Federal Research Corporation are now, and have been for more than 3 years last past, engaged in the business of selling and distributing a medicinal preparation designated "Retardo." The respondents American Clinical Laboratories, Inc., and Federal Research Corporation cause said preparation, when sold, to be shipped and transported from their aforesaid places of business in the State of New York to the purchasers thereof at their respective points of location in States of the United States other than the State of New York, and also in the District of Columbia. The said respondents maintain a course of trade and commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In course of the operation of their businesses as aforesaid, the respondents American Clinical Laboratories, Inc., and Federal Research Corporation are engaged in substantial competition with other corporations and with partnerships, firms, and individuals distributing and selling, or manufacturing, distributing, and selling similar medicinal preparations, or other preparations designed and intended for similar usage or for treatment of similar ailments and conditions of the human body, 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 of selling the preparation "Retardo" in commerce as herein described, and in furtherance of the sale thereof, the respondents American Clinical Laboratories, Inc., and Federal Research Corporation, during the times mentioned herein, caused statements and representations to appear in newspapers, bulletins, and publications having an inter-

state circulation, and the respondent American Clinical Laboratories, Inc., caused statements and representations to be made in radio broadcasts having an interstate circulation, purporting to be descriptive of said preparation and of its effectiveness in use.

In furtherance of the sale of such preparation, and to create a public demand therefor, the respondent American Clinical Laboratories, Inc., during the times mentioned herein, made, or caused to be made, the following statements and representations in various newspapers, periodicals, bulletins, publications, and radio broadcasts having an interstate circulation:

Retardo is absolutely free of all harmful ingredients and furthermore requires no dieting.

Weight reduction with Retardo is safe.

Retardo is the newest discovery for the reduction of excess weight.

You take one little, tasteless Retardo tablet followed by a glass of water thirty minutes later. This method is so simple, so satisfying, so effective and so economical, that thousands of happy men and women use Retardo each and every day throughout the civilized world.

Every day people are reporting losses of from eight to twenty pounds a month.

I'll tell you a secret. I haven't dieted. I have been using the Retardo method. You can eat what you want and you don't have to diet or exercise.

Take one Retardo tablet after each meal.

In furtherance of the sale of such preparation, and to create a public demand therefor, the respondent Federal Research Corporation, during the times mentioned herein, made, or caused to be made, the following statements and representations in newspapers, bulletins, and publications having an interstate circulation:

Retardo is helping thousands of users all over the United States to rid themselves of excessive, unwanted fat—and these people are eating three solid, full meals a day. They are not dieting and are not undertaking strenuous and boring exercises. They do, however, take one little Retardo tablet after each meal, and follow the simple directions.

Retardo is reliable in treatments of obesity.

This safe way of aiding your body in reducing its excess fat. Without dieting.

Retardo tablets * * * contain no dangerous drugs.

The aforesaid statements, together with many others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondents American Clinical Laboratories, Inc., and Federal Research Corporation to members of the purchasing public: (1) That the use of said preparation is a safe method for losing a substantial amount of weight; (2) that the use of such preparation is a competent, effective, and reliable method for losing a substantial amount of weight; (3) that the use of said preparation will reduce weight without dieting or exercise; (4) that

such preparation contains no harmful or dangerous drugs. The respondent American Clinical Laboratories, Inc., makes the additional representation in the aforesaid statements that "Retardo" is the newest discovery for the treatment of excess weight.

The use of the word "laboratories" by respondent American Clinical Laboratories, Inc., as a part of its name or designation in the aforesaid statements and representations serves as a representation by the said respondent to members of the purchasing public that said respondent is the manufacturer or compounder of the preparation "Retardo."

The respondent American Clinical Laboratories, Inc., and the respondent Official Research Bureau of New York, Inc., have made, or caused to be made, in various of the aforesaid advertisements, the statement that the preparation "Retardo" has been "Approved by the Official Research Bureau of New York" and have reproduced, or caused to be reproduced, a seal on the various other of said advertisements, and to be inserted on such seal the words "Seal of Approval, Official Research Bureau of New York." Such use of the words "Official Research Bureau of New York" and particularly the use of the word "Official" and such use of a seal and the words "Seal of Approval, Official Research Bureau of New York" serves as a representation by the said respondent to members of the purchasing public that such preparation has been approved by a research bureau having an official connection with the city or State of New York.

PAR. 5. In truth and in fact the use of such preparation is not a safe method for losing a substantial amount of weight. The preparation contains a substantial amount of boric acid, which has a potential toxic property and is cumulative in action if taken in daily or frequent doses. The purchaser of such preparation is instructed by the respondents American Clinical Laboratories, Inc., and Federal Research Corporation, in the advertising above referred to, to take a Retardo tablet after each meal for a period of weeks. If such preparation is taken according to such directions of the said respondents, a large number of such users of the preparation will manifest toxic effects because of such use. Such preparation is not the newest discovery for the treatment of excess weight. The use of such preparation is not a competent, effective, or reliable method for losing a substantial amount of weight. The only competent, reliable, safe, and effective method for losing a substantial amount of weight is proper exercise and diet. Such preparation does contain a harmful or dangerous drug in that the boric acid contained in such preparation is a harmful drug when such preparation is taken in the amounts and over the period of time as directed by the said respondents. Such

preparation has not been approved by a research bureau having an official connection with the city or State of New York. The respondent Official Research Bureau of New York, Inc., has no official connection with the city or the State of New York.

In truth and in fact, the said preparation has no substantial therapeutic value as a remedy or cure for, or as a treatment for, obesity. All the aforesaid statements and representations of respondents American Clinical Laboratories, Inc., and Federal Research Corporation relative to the therapeutic value of the preparation "Retardo" are grossly inaccurate, incorrect, and exaggerated and are not true statements of the therapeutic value of the preparation "Retardo."

The respondent American Clinical Laboratories, Inc., is not the manufacturer or compounder of the preparation "Retardo." The said respondent purchases said preparation from the manufacturer or compounder thereof and acts as a middleman in distributing such preparation in commerce as herein described. There are a substantial number of members of the purchasing public who prefer to purchase merchandise direct from the manufacturer in the belief that by eliminating the profit of the so-called "middleman" in such merchandise that they will procure a substantial financial saving and various other advantages.

PAR. 6. The aforesaid statements and representations (1) by respondent American Clinical Laboratories, Inc., and by respondent Federal Research Corporation relative to the efficacy of the preparation "Retardo"; (2) by respondent American Clinical Laboratories, Inc., and by respondent Official Research Bureau of New York, Inc., relative to the preparation "Retardo" being approved by a research bureau having an official connection with the city or State of New York; (3) by the respondent American Clinical Laboratories, Inc., relative to the said respondent being the manufacturer or compounder of such preparation; have a tendency and capacity to and do confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken beliefs respectively that (1) the preparation "Retardo" is a remedy or a competent, safe, and adequate treatment for the ailments of the human body for which said preparation is recommended and advertised as aforesaid; (2) such preparation has been approved by a research bureau having an official connection with the city or State of New York; and (3) the respondent American Clinical Laboratories, Inc., is the manufacturer or compounder of such preparation and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Trade is thereby diverted unfairly to the respondents American Clinical Laboratories, Inc., and Federal Research Corporation from their said

competitors who are engaged in the sale and distribution of similar preparations, or other preparations, designed and intended for similar usage in treating the ailments of the human body for which said preparation "Retardo" is recommended, and who truthfully represent the ingredients, safety, and effectiveness of their respective preparations and their own business status with respect to being manufacturers or having any official connection with any state or local governmental bureaus. In consequence thereof injury has been done and is being done by respondents American Clinical Laboratories, Inc., Federal Research Corporation, and Official Research Bureau of New York, Inc., and by respondent Shelley Braverman who directs and controls said respondents in the aforesaid acts and practices, to competition in commerce among and between the various States of the United States.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 10, 1938, issued, and on May 13, 1938, served, its complaint in this proceeding upon the respondents, American Clinical Laboratories, Inc., Official Research Bureau of New York, Inc., Federal Research Corporation, and Shelley Braverman, 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 the complaint were introduced by John R. Phillips, Jr., attorney for the Commission, before John J. Keenan, 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, by order entered herein, granted respondents' motion for permission to withdraw the answer previously filed and to substitute therefor an answer read into the record on June 16, 1939, which answer admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the substitute answer 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. The corporate respondents American Clinical Laboratories, Inc., Official Research Bureau of New York, Inc., and Federal Research Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, and having their respective offices and principal places of business at 149–50 Roosevelt Avenue, in the Borough of Queens, in the city and State of New York. The respondent Shelley Braverman is an individual, and has his office and place of business at 149–50 Roosevelt Avenue, in the Borough of Queens, in the city and State of New York. Respondent Shelley Braverman owns the majority of the stock of American Clinical Laboratories, Inc., and Federal Research Corporation, and owns all the stock of Official Research Bureau of New York, Inc., and directs and controls the sales activities and policies of said respondents with respect to the acts and practices herein set forth.

PAR. 2. The respondents American Clinical Laboratories, Inc., and Federal Research Corporation are not, and have been for more than 3 years last past, engaged in the business of selling and distributing a medicinal preparation designated "Retardo." The respondents American Clinical Laboratories, Inc., and Federal Research Corporation cause said preparation, when sold, to be shipped and transported from their aforesaid places of business in the State of New York to the purchasers thereof at their respective points of location in States of the United States other than the State of New York, and also in the District of Columbia. The said respondents maintain a course of trade and commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In course of the operation of their businesses as aforesaid, the respondents American Clinical Laboratories, Inc. and Federal Research Corporation are engaged in substantial competition with other corporations and with partnerships, firms, and individuals distributing and selling, or manufacturing, distributing, and selling similar medicinal preparations, or other preparations designed and intended for similar usage or for treatment of similar ailments and conditions of the human body, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In furtherance of the sale of such preparation, Retardo, and to create a public demand therefor, the respondent American Clinical Laboratories, Inc., during the times mentioned herein, made, or caused to be made, the following statements and representations in various newspapers, periodicals, bulletins, publications, all having a general circulation among and between the various States of the United States, and in radio continuities, broadcast from stations having sufficient power to convey their programs to persons located in States other than those wherein said broadcasts originate.

Retardo is absolutely free of all harmful ingredients and furthermore requires no dieting.

Weight reduction with Retardo is safe.

Retardo is the newest discovery for the reduction of excess weight.

You take one little, tasteless Retardo tablet followed by a glass of water thirty minutes later. This method is so simple, so satisfying, so effective and so economical, that thousands of happy men and women use Retardo each and every day throughout the civilized world.

Every day people are reporting losses of from eight to twenty pounds a month.

I'll tell you a secret. I haven't dieted. I have been using the Retardo method. You can eat what you want and you don't have to diet or exercise.

Take one Retardo tablet after each meal.

In furtherance of the sale of such preparation, Retardo, and to create a public demand therefor, the respondent Federal Research Corporation, during the times mentioned herein, made, or caused to be made, the following statements and representations in newspapers, bulletins, and publications, all having a general circulation among and between the various States of the United States.

Retardo is helping thousands of users all over the United States to rid themselves of excessive, unwanted fat—and these people are eating three solid, full meals a day. They are not dieting and are not undertaking strenuous and boring exercises. They do, however, take one little Retardo tablet after each meal, and follow the simple directions.

Retardo is reliable in treatments of obesity.

This safe way of aiding your body in reducing its excess fat. Without dieting.

Retardo tablets * * * contain no dangerous drugs.

The aforesaid statements, together with many others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondents American Clinical Laboratories, Inc., and Federal Research Corporation to members of the purchasing public: (1) That the use of said preparation is a safe method for losing a substantial amount of weight; (2) that the use of such preparation is a competent, effective and reliable method for losing a substantial amount of weight; (3) that the use of said

preparation will reduce weight without diet or exercise; (4) that such preparation contains no harmful or dangerous drugs. The respondent American Clinical Laboratories, Inc., makes the additional representation in the aforesaid statements that "Retardo" is the newest discovery for the treatment of excess weight.

The use of the word "laboratories" by respondent American Clinical Laboratories, Inc., as a part of its corporate name serves as a representation by the said respondent to members of the purchasing public that said respondent is the manufacturer or compounder of the preparation "Retardo."

The respondent American Clinical Laboratories, Inc., and the respondent Official Research Bureau of New York, Inc., have made, and caused to be made, in various of the aforesaid advertisements, the statement that the preparation "Retardo" has been "Approved by the Official Research Bureau of New York" and have reproduced, or caused to be reproduced, a seal on the various other of said advertisements, and to be inserted on such seal the words "Seal of Approval, Official Research Bureau of New York." Such use of the words "Official Research Bureau of New York" and particularly the use of the word "Official" and such use of a seal and the words "Seal of Approval, Official Research Bureau of New York" serves as a representation by the said respondents to members of the purchasing public that such preparation has been approved by a research bureau having an official connection with the city or State of New York.

PAR. 5. In truth and in fact the use of such preparation is not a safe method for losing a substantial amount of weight. The preparation contains a substantial amount of boric acid, which has a potential toxic property and is cumulative in action if taken in daily or frequent doses. The purchaser of such preparation is instructed by the respondents American Clinical Laboratories, Inc., and Federal Research Corporation, in the advertising above referred to, to take a Retardo tablet after each meal for a period of weeks. If such preparation is taken according to such directions of the said respondents, a large number of such users of the preparation will manifest toxic effects because of such use. Such preparation is not the newest discovery for the treatment of excess weight. The use of such preparation is not a competent, effective, or reliable method for losing a substantial amount of weight. The only competent, reliable, safe, and effective method for losing a substantial amount of weight is proper exercise and diet. Such preparation does contain a harmful or dangerous drug in that the boric acid contained in such preparation is a harmful drug when such preparation is taken in the amounts and over the period of time as directed by the said respondents.

Such preparation has not been approved by a research bureau having an official connection with the city or State of New York. The respondent Official Research Bureau of New York, Inc., has no official connection with the city or the State of New York.

In truth and in fact, the said preparation has no substantial therapeutic value as a remedy or cure for, or as a treatment for, obesity. All the aforesaid statements and representations of respondents American Clinical Laboratories, Inc., and Federal Research Corporation relative to the therapeutic value of the preparation "Retardo" are grossly inaccurate, incorrect, and exaggerated and are not true statements of the therapeutic value of the preparation "Retardo."

The respondent American Clinical Laboratories, Inc., is not the manufacturer or compounder of the preparation "Retardo." The said respondent purchases said preparation from the manufacturer or compounder thereof and acts as a middleman in distributing such preparation in commerce as herein described. There are a substantial number of members of the purchasing public who prefer to purchase merchandise direct from the manufacturer in the belief that by eliminating the profit of the so-called "middleman" in such merchandise that they will procure a substantial financial saving and various other advantages.

PAR. 6. The aforesaid statements and representations (1) by respondent American Clinical Laboratories, Inc., and by respondent Federal Research Corporation relative to the efficacy of the preparation "Retardo"; (2) by respondent American Clinical Laboratories, Inc., and by respondent Official Research Bureau of New York, Inc., relative to the preparation "Retardo" being approved by a research bureau having an official connection with the city or State of New York; (3) by the respondent American Clinical Laboratories, Inc., relative to the said respondent being the manufacturer or compounder of such preparation; have a tendency and capacity to and do confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken beliefs respectively that (1) the preparation "Retardo" is a remedy or a competent, safe, and adequate treatment for the ailments of the human body for which said preparation is recommended and advertised as aforesaid; (2) such preparation has been approved by a research bureau having an official connection with the city or State of New York; and (3) the respondent American Clinical Laboratories, Inc., is the manufacturer or compounder of such preparation and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Trade is thereby diverted unfairly to the respondents American Clinical Laboratories, Inc., and Federal Research Corporation from their said

competitors who are engaged in the sale and distribution of similar preparations or other preparations, designed, and intended for similar usage in treating the ailments of the human body for which said preparation "Retardo" is recommended, and who truthfully represent the ingredients, safety, and effectiveness of their respective preparations and their own business status with respect to being manufacturers or having any official connection with any state or local governmental bureaus. In consequence thereof injury has been done and is being done by respondents American Clinical Laboratories, Inc., Federal Research Corporation, and Official Research Bureau of New York, Inc., and by respondent Shelley Braverman who directs and controls said respondents in the aforesaid acts and practices, to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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, testimony, and other evidence, and the respondents' answer read into the record herein on June 16, 1939, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, 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 respondents, American Clinical Laboratories, Inc., and Federal Research Corporation and their officers, and respondent Shelley Braverman, an individual, and their respective agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a medicinal preparation for the treatment of obesity, now known as "Retardo," whether sold under that name or under any other name, or of any other medicinal preparation containing substantially similar ingredients or possessing substantially similar therapeutic effect, do forthwith cease and desist from:

1. Representing that the use of said preparation "Retardo" is a safe, competent, effective or reliable method of treatment for losing weight.

2. Representing that the use of said preparation "Retardo" will reduce weight without dieting or exercise.

3. Representing that said preparation "Retardo" is the newest discovery for the reduction of excess weight.

4. Representing, through failure to reveal that said preparation is not wholly safe for use in self-medication or through any other means or device, or in any other manner, that said preparation "Retardo" contains no harmful or dangerous drugs, and that the use of said preparation will have no ill effects upon the human body.

It is further ordered, That respondents, American Clinical Laboratories, Inc., and Official Research Bureau of New York, Inc., corporations, and Shelley Braverman, an individual, and their respective agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of a medicinal preparation for the treatment of obesity, now known as "Retardo," whether sold under that name or under any other name, or of any other medicinal preparation containing substantially similar ingredients or possessing substantially similar therapeutic effect, do forthwith cease and desist from:

Representing, through the use of the terms "Approved by the Official Research Bureau of New York" or "Seal of Approval, Official Research Bureau of New York" or through the use of the corporate name "Official Research Bureau of New York, Inc.," to designate, describe, or refer, in any way, to said preparation "Retardo," or through any other means or device or in any other manner, that said preparation has been approved by any research bureau having an official connection with the city or State of New York, or has been approved by any municipal, State, or Governmental agency or bureau whatsoever, until and unless said preparation has in fact received such approval.

It is further ordered, That respondents, American Clinical Laboratories, Inc., a corporation, and Shelley Braverman, an individual, and their respective agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of a medicinal preparation for the treatment of obesity, now known as "Retardo," whether sold under that name or under any other name, or of any other medicinal preparation containing substantially simi-

lar ingredients or possessing substantially similar therapeutic effect, do forthwith cease and desist from:

Representing, through the use of the term "Laboratories" in the corporate name of respondent, American Clinical Laboratories, Inc., or in any other manner, or through the use of any other term of similar meaning, or through any other means or device, that the respondent, American Clinical Laboratories, Inc., conducts, operates, or maintains a laboratory, or is the manufacturer or compounder of the preparation "Retardo," unless and until said corporate respondent actually owns and operates, or directly or absolutely controls, a laboratory for the purpose of manufacturing, testing, and experimenting with such preparation.

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

THE PERMA-MAID 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 3268. Complaint, Nov. 20, 1937—Decision, Nov. 18, 1939

Where a corporation engaged, as wholly owned subsidiary of manufacturer of stainless steel cooking utensils, in selling, as agent and distributor of said manufacturer, such products to purchasers in other States, in substantial competition with others engaged in manufacture and in sale and distribution among the various States and in the District of Columbia of cooking utensils made from steel or other materials or metals, including distributors of like and similar commodities made from aluminum metal and distributors of like and similar commodities made from steel and other metals, who do not falsely represent their products or make false and disparaging statements concerning those of their competitors;

In selling from its district offices its said steel cooking utensils through some 300 sales representatives, and who obtained orders from members of the public for such products through house-to-house canvass, and certain of whom, acting on their own initiative in obtaining and paying for pamphlets, leaflets and circulars from persons having no connection with or interest in it or its business, and which, containing false and misleading statements and representations with respect to value and effect of aluminum materials used in kitchen utensils, were made use of by said agents and representatives, contrary to its instructions—but in scope of their employment,

Represented through statements and representations in pamphlets, leaflets, and circulars, as aforesaid and in sales talks to prospective purchasers by such agents and representatives, that food prepared and kept in aluminum utensils was detrimental to user thereof, and that preparation thereof in such utensils caused formation of poisons, and consumption of food thus prepared or kept in such utensils would cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases, facts being aluminum had been used in manufacture of cooking utensils for many years and been found, during such period to be satisfactory material for such use, consumption of food prepared or kept therein would not cause ulcers or other ailments, conditions, or afflictions, and foods so prepared or kept were not detrimental to health of users, and preparation of food in such utensils did not cause formation of poisons;

With effect of misleading and deceiving substantial number of persons to whom such false, misleading and unfairly disparaging representations were made by its agents and representatives, as above set forth, into false and erroneous belief that cooking utensils made from aluminum were harmful and dangerous to the consumers of food prepared therein, and that all the statements and representations made by such agents and representatives with respect to aluminum utensils were true, and of thus inducing such persons, in reliance upon such belief or beliefs, to purchase its cooking utensils instead of those of competitors, and of thereby unfairly diverting trade in commerce to it from its competitors aforesaid:

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

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

Mr. S. Brogdyne Teu, II for the Commission.

Larkin, Rathbone & Perry, 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 Perma-Maid 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 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, Perma-Maid Co., Inc., is a corporation organized and doing business under the laws of the State of Delaware, and having its principal place of business in the city of Toledo, State of Ohio. It is now, and for more than 1 year last past has been engaged in the manufacture, sale, and distribution of steel cooking utensils 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 its place of business in the city of Toledo, State of Ohio, 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 its said business, respondent is now, and has been, in substantial competition with other corporations, and with individuals, partnerships, and firms likewise engaged in the business of manufacturing, selling, and distributing cooking utensils made from steel or other metals or materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course of the operation of its business, and for the purpose of inducing the purchase of its products, exhibits samples of said products to prospective purchasers and makes many

false, misleading and unfairly disparaging statements and representations with respect to the value of certain other materials used in the manufacture of kitchen utensils and the effects obtained from use of utensils made from such materials. Said false and misleading statements and representations are made in pamphlets, leaflets, and circulars furnished by respondent for distribution or display to members of the purchasing public, and are also made by respondent's representations in sales talks to prospective customers. The following are representative of the various false and misleading statements and representations contained in said circulars, leaflets, and pamphlets, and made in said sales talks, but are not all inclusive:

1. Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of ALUMINUM is used for the purpose of cooking and storing foods throughout the United States.

2. The metal is soft and forms various poisons with the foods with which it is in contact.

3. There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.

4. The manufacturers of dyes state in their literature that we should NOT do our dyeing in ALUMINUM—There is a reason.

5. The substance is used for tanning hides, wall paper sizing, etc. It is the principal metal base used in making bricks, sewer pipe and road building materials. * * *

6. Boil some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.

7. Did you ever find maggots in your aluminum pans? Do you know that such pans may be full of the most deadly bacteria known to science?

8. Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum. Do you know how such poisonings occur? If you do not, this circular will tell you.

9. Aluminum is a soft metal and is easily corroded and pitted under certain conditions. For example, when sauerkraut or vegetables are cooked in aluminum and allowed to stand for some time the utensil often becomes badly pitted.

10. It has frequently happened that sauerkraut has eaten holes completely through the aluminum kettles in which it was prepared.

11. Vegetables that are cooked with soda and salt will produce similar results.

12. Corned beef corrodes most aluminum utensils. * * *

13. Rolled, pressed or cast aluminum all corrode.

PAR. 5. All the foregoing statements and representations are false and misleading, and serve as representations to customers and prospective customers that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases; that food so prepared or kept in aluminum utensils is detrimental to the health of the users thereof, and that preparation of food in aluminum utensils causes formation of poisons.

In truth and in fact aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a highly satisfactory material for use in cooking utensils. Further, in truth and in fact, the consumption of food prepared or kept in aluminum kitchen utensils will not cause ulcers, cancers, cancerous growths, and other ailments, afflictions, and diseases of the human body. Foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof by reason of the use of aluminum utensils. Poisons are not formed from the preparation of foods in aluminum utensils.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, manufacturers and distributors of like and similar commodities who truthfully advertise and represent their respective products, and who refrain from defaming and unfairly disparaging the products of competitors in the manner and form herein set out, by which respondent defames and disparages its competitors' products.

PAR. 7. The aforesaid false, misleading, and disparaging representations so made by respondent as above alleged have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial part of the consuming public into the false and erroneous belief that cooking utensils made from aluminum are undesirable and harmful in the ways alleged, and are dangerous to the consumers of food prepared in said aluminum cooking utensils, and that all of said statements and representations made by respondent with reference to said aluminum cooking utensils are true.

As a result thereof trade has been unfairly diverted to respondent from those competitors herein referred to engaged in like and similar businesses. 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. 8. 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 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 the Federal Trade Commission Act, the Federal Trade Commission issued a complaint on the 20th day of November 1937, against the respondent, The Perma-Maid Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

The respondent filed its answer to the complaint on December 13, 1937.

After the filing of the respondent's answer to the complaint, testimony and evidence in support of the complaint was introduced by S. Brogdyne Teu, II, Esq., attorney for the Commission, and in opposition to the complaint by T. R. Iserman, Esq., and C. D. Peet, Esq., of counsel to Larkin, Rathbone & Perry, attorneys for the respondent, before Edward E. Reardon, Esq., theretofore duly designated an examiner by the Commission.

The testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint; the answer to the complaint; the testimony and evidence; and upon briefs and 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 the findings of the Commission as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, The Perma-Maid Co., Inc., is a company incorporated in March 1935, and organized and doing business under the laws of Ohio. Its principal office and place of business is located at Cincinnati, Ohio.

Par. 2. The respondent is a wholly owned subsidiary of the Electric Auto-Lite Co., and the selling agent and distributor of stainless steel cooking utensils manufactured by the Electric Auto-Lite Co.

The Perma-Maid Co. has district offices for the conduct of the sales of the cooking utensils, located at Boston, Mass.; New Haven,

Conn.; New York City, N. Y.; Newark, N. J.; and, at Philadelphia, Pa. It employs about 300 sales representatives, who work out from the district offices, and obtain orders from members of the public for the purchase of the cooking utensils in a house to house canvass. The cooking utensils so ordered and purchased are later delivered by the respondent from Cincinnati, Ohio, to the purchasers in the other States, or in States other than the State of origin of the shipment.

PAR. 3. The respondent is, and for more than 1 year prior to December 13, 1937, has been, engaged in the sale of stainless steel cooking utensils, in commerce, between and among the various States of the United States and the District of Columbia.

PAR. 4. The respondent, in the sale of its stainless steel cooking utensils, is and has been engaged, during the times mentioned and referred to above, in substantial competition with others, individuals, firms and corporations, who are and have been engaged in the business of manufacturing and in the business of selling and distributing, in commerce among and between the various States of the United States and in the District of Columbia, cooking utensils made from steel or other metals or materials.

PAR. 5. The respondent's agents and sales representatives referred to above, have exhibited samples of respondent's products to prospective purchasers, and certain of the agents and sales representatives, upon their own initiative, for the purpose of inducing the purchase of respondent's products, have made false, misleading, and unfairly disparaging statements and representations with respect to the value of aluminum materials used in the manufacture of kitchen utensils and the effects obtained from the use of utensils made from such materials upon foods prepared therein.

Said false and misleading statements and representations have been made in pamphlets, leaflets, or circulars and in sales talks to prospective purchasers. Respondent did not print, obtain or pay for said pamphlets, leaflets, or circulars. They were obtained and paid for by such agents and representatives from persons having no connection with or interest in respondent, or its business, and who published said pamphlets, leaflets, or circulars or similar ones for several years before respondent began business.

The following are representative of the various statements and representations by respondent's agents and representatives contained in said sales talks and literature but are not all inclusive:

1. Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the Governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of ALUMINUM is used for the purpose of cooking and storing foods throughout the United States.

2. The metal is soft and forms various poisons with the foods with which it is in contact.

3. There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.

4. The manufacturers of dyes state in their literature that we should NOT do our dyeing IN ALUMINUM—There is a reason.

5. The substance is used for tanning hides, wall paper sizing, etc. It is the principal metal base used in making bricks, sewer pipe and road building materials. * * *

6. Boil some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.

7. Did you ever find maggots in your aluminum pans? Do you know that such pans may be full of the most deadly bacteria known to science?

8. Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum. Do you know how such poisonings occur? If you do not, this circular will tell you.

9. It has frequently happened that sauerkraut has eaten holes completely through the aluminum kettles in which it was prepared.

10. Vegetables that are cooked with soda and salt will produce similar results.

11. Corned beef corrodes most aluminum utensils. * * *

PAR. 6. The foregoing statements and representations of respondent's agents and sales representatives have served as representations to customers and prospective customers that food prepared or kept in aluminum utensils is detrimental to the health of the users thereof; and that the preparation of food in aluminum utensils causes the formation of poisons. The respondent also stipulated that statements and representations made by its agents and representatives serve as representations to customers and prospective customers that the consumption of food prepared or kept in aluminum utensils would cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases.

PAR. 7. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a satisfactory material for use in cooking utensils. The consumption of food prepared or kept in aluminum kitchen utensils will not cause ulcers, cancers, cancerous growths, or other ailments, afflictions, or diseases of the body. The foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof, and the preparation of food in aluminum utensils does not cause the formation of poisons.

PAR. 8. Respondent, upon discovering that certain of its agents and representatives had made the statements and representations and had distributed the pamphlets, leaflets, and circulars above referred to, forbade its agents and representatives to make such statements and representations and to distribute such pamphlets, leaflets and circulars, and for more than one year last past on every occasion where a violation of its instructions has been called to its attention, has discharged or otherwise penalized the agents and representatives so violating its orders. In making said statements and representations, however, said agents and representatives were acting within their scope of employment by respondent. Respondent is fully responsible for the aforesaid statements and representations made by its agents and representatives.

PAR. 9. There are, among the competitors of the respondent referred to in paragraph 4 hereof, distributors of like and similar commodities made from aluminum metal, and distributors of like and similar commodities made from steel and other materials, who do not falsely represent their products or make false and disparaging statements concerning the products of their competitors.

PAR. 10. The false, misleading, and unfairly disparaging representations made by respondent's agents and representatives, as herein set out, have had the tendency and capacity to, and did, mislead and deceive a substantial number of the persons to whom they were made into the false and erroneous belief that cooking utensils made from aluminum are harmful and are dangerous to the consumers of food prepared therein, and that all of the statements and representations made by respondent's agents and representatives with reference to aluminum utensils are true, and in reliance upon such belief or beliefs so induced into purchasing respondent's cooking utensils instead of the cooking utensils of respondent's competitors. In consequence thereof trade in commerce among and between the various States of the United States and in the District of Columbia in cooking utensils was thereby diverted unfairly to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of respondent's competitors and of the public, 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 complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward E. Reardon, 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 S. Brogdyne Teu, II, counsel for the Commission, and T. R. Iserman, 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 the Federal Trade Commission Act.

It is ordered, That the respondent Perma-Maid Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cooking utensils in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that food prepared or kept in aluminum utensils is detrimental to the user thereof.

2. Representing that the preparation of food in aluminum utensils causes the formation of poisons.

3. Representing that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths and various other ailments, afflictions and diseases.

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

DIAMOND KNITTING 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 3877. Complaint, Aug. 26, 1939—Decision, Nov. 28, 1939

Where a corporation engaged in manufacture of various articles of knitted wearing apparel, and in sale and distribution thereof to retailers in various States and in the District of Columbia—

Falsely represented, on labels attached to its products, constituent fibers or materials of which they were composed, and thus represented certain products as composed entirely of unweighted silk, product of cocoon of silkworm, through attaching thereto cloth tag or label bearing words "Genuine * * * All Silk," with diamond interposed, notwithstanding fact products in question were not, as aforesaid, and as understood by purchasing and consuming public from word "silk," unqualified, composed entirely of silk, long highly esteemed product of cocoon of silkworm, and not weighted or subjected to metallic bath containing metallic salts or other weighting substance;

With tendency and capacity to mislead and deceive retail dealers and substantial portion of purchasing public into erroneous and mistaken belief that said products were composed wholly of unweighted silk, and with result, by reason of such belief, that a number of retailers and members of purchasing public bought substantial volume of its products and trade was diverted unfairly to it from its competitors engaged in sale and distribution of various articles of knitted silk wearing apparel in commerce, and who do not falsely represent the constituent fibers of which their products are composed:

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

Mr. George W. Williams for the Commission.

Mr. Samuel A. Blank, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Diamond Knitting Mills, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Diamond Knitting Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at Seventh and Green Streets, city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent, Diamond Knitting Mills, Inc., is, and for several years last past has been, engaged in the manufacture and in the sale and distribution of various articles of knitted wearing apparel. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in Philadelphia, Pa., to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with individuals, firms and partnerships engaged in selling and distributing various articles of knitted wearing apparel 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 its business, the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made, by means of false representations on labels attached to its products. Among and typical of such acts and practices, respondent represents certain of its products as being composed entirely of unweighted silk, the product of the cocoon of the silkworm, which has not been subjected to the process of a metallic bath, when in fact said products are composed entirely of weighted silk. As an example of this practice, the respondent attaches to various of its products a permanent cloth tag or label which bears the following words:

Genuine * * * All Silk

and also contained thereon in a diamond the words

Diamond Knit

the said diamond being inserted between the words "Genuine" and "All Silk."

By the use of the words "silk" and "all silk" on tags, labels, and by other means, to designate or describe its various products, the respondent represents that said products are composed entirely of unweighted silk, when in truth and in fact said products are composed entirely of weighted silk, which is silk which has been subjected to the process of a metallic bath and contains metallic salts or other weighting substance.

PAR. 5. The word "silk" for many years has had and still has in the minds of the purchasing 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. The unqualified word "silk" has in the minds of the purchasing and consuming public the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

PAR. 6. The use by the respondent of the aforesaid practice of designating or describing its products as being "silk" or "all silk" has had, and now has, the tendency and capacity to mislead and deceive retail dealers and a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are composed wholly of unweighted silk. On account of this erroneous and mistaken belief, a number of retail dealers and members of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to the respondent from its competitors who are also engaged in the sale and distribution of various articles of knitted silk wearing apparel in commerce among and between the various States of the United States and who do not falsely represent the constituent fibers of which their products are composed. As a consequence 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. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of August 1939,

issued and served its complaint in this proceeding upon respondent, Diamond Knitting Mills, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices, in commerce in violation of the provisions of said act. On the 19th day of September 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Diamond Knitting Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and place of business located at Seventh and Green Streets, city of Philadelphia, State of Pennsylvania.

PAR. 2. The respondent, Diamond Knitting Mills, Inc., is, and for several years last past has been, engaged in the manufacture and in the sale and distribution of various articles of knitted wearing apparel. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in Philadelphia, Pa., to purchasers thereof located in other States of the United States and in the District of Columbia.

The respondent maintains, and at all times mentioned herein 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. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with individuals, firms and partnerships engaged in selling and distributing various articles of knitted wearing apparel 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 its business, the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed

by it are made, by means of false representations on labels attached to its products. Among and typical of such acts and practices, respondent represents certain of its products as being composed entirely of unweighted silk, the product of the cocoon of the silkworm, which has not been subjected to the process of a metallic bath, when in fact said products are composed entirely of weighted silk. As an example of this practice, the respondent attaches to various of its products a permanent cloth tag or label which bears the following words:

Genuine * * * All Silk

and also contained thereon in a diamond the words

Diamond Knit

the said diamond being inserted between the words "Genuine" and "All Silk."

By the use of the words "silk" and "all silk" on tags, labels, and by other means, to designate or describe its various products, the respondent represents that said products are composed entirely of unweighted silk, when in truth and in fact said products are composed entirely of weighted silk, which is silk which has been subjected to the process of a metallic bath and contains metallic salts or other weighting substance.

PAR. 5. The word "silk" for many years has had and still has in the minds of the purchasing 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. The unqualified word "silk" has in the minds of the purchasing and consuming public the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

PAR. 6. The use by the respondent of the aforesaid practice of designating and describing its products as being "silk" or "all silk" has had, and now has, the tendency and capacity to mislead and deceive retail dealers and a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are composed wholly of unweighted silk. On account of this erroneous and mistaken belief, a number of retail dealers and members of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to the respondent from its competitors who are also engaged in the sale and distribution of various articles of knitted silk wearing apparel in commerce among and between the various States of the United States

and who do not falsely represent the constituent fibers of which their products are composed.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, Diamond Knitting Mills, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "all silk" or the unqualified word "silk" or any other term of similar import and meaning to designate, describe, or in any way refer to any fabric or merchandise not made wholly from unweighted silk, the product of the cocoon of the silkworm.

2. Representing through failure to disclose the presence and percentage of weighted silk contained in any fabric or other merchandise and the percentage of weighting in such weighted silk, or through any other means or device, or in any manner, that fabrics or other merchandise composed in whole or in part of weighted silk are composed of unweighted silk; provided, however, that the word "silk" may be used to refer to the silk content of such fabric or other merchandise when the disclosures herein enumerated are clearly and conspicuously made in connection with the use of such term.

3. Representing in any manner that the products sold by respondent are made of a material, fiber or yarn other than that of which such products are actually made.

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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

DURO-TEST CORPORATION. Complaint, April 28, 1936. Order, June 15, 1939. (Docket 2788.)

Charge: Misrepresenting effectiveness and performance of product; in connection with the sale of incandescent lamps.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint, the answer of respondent, the testimony taken in support of the allegations of the complaint, and in opposition thereto, and the briefs and oral arguments of counsel for the Commission and for the respondent, and the Commission having duly considered the same and the record herein, and being now fully advised in the premises, and it appearing to the Commission that the allegations of the complaint have not been sustained;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. John Walsh and *Mr. John Wattawa*, of Washington, D. C., for respondent.

PEANUT SPECIALTY CO. Complaint, December 24, 1934. Original order, February 5, 1935. Docket 2273, 20 F. T. C. 127. Order setting aside, etc., June 21, 1939.

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Cease and desist order in this case was set aside 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 order to cease and desist issued herein on the 5th day of February A. D. 1935, be, and the same hereby is, set aside.

It is further ordered, That the amended and supplemental complaint herein be issued and served forthwith.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS, its officers and members. Complaint, March 27, 1935. Order, June 28, 1939. (Docket 2346.)

Charge: Combination and conspiracy through coercion, boycott, and intimidation and threats thereof, and other practices; in connection with the manufacture and sale of ice cream and other merchandise.

Record closed, after answers, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that subsequent to the issuance of complaint herein the entire files in this proceeding were, at the request of the Attorney General, transmitted to the Department of Justice, and it further appearing that criminal indictments have been brought by the Department of Justice against respondents herein in Chicago, Ill., in the cases of *United States of America* v. *The Borden Company, et al.*, No. 31197, and *United States of America* v. *National Dairy Products Corporation, et al.*, No. 31205, in the District Court of the United States for the Northern District of Illinois, Eastern Division, and it further appearing that said criminal indictments and the proceedings in connection therewith are still pending in said court;

It is 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 and resume prosecution thereof in accordance with its regular procedure should future facts so warrant.

Mr. Wilbur N. Baughman and *Mr. John Darsey* for the Commission.

Alvord & Alvord, of Washington, D. C., for International Association of Ice Cream Manufacturers and its officers.

Davies, Beebe, Busick & Richardson, of Washington, D. C., and *Mr. Robert S. Gordon*, of New York City, for National Dairy Products Corp.

Duane, Morris & Heckscher, of Philadelphia, Pa., and *Milbank, Tweed, Hope & Webb*, of New York City, for The Borden Co.

Honnold & Avis, of Tulsa, Okla., for Southwest Utility Dairy Products Co.

HITT FIREWORKS CO. Complaint, April 19, 1938. Order. August 3, 1939. (Docket 3382.)

Charge: Misrepresenting business status as importer, and only manufacturer and importer in State; in connection with the manufacture and sale of fireworks.

Dismissed, 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 evidence fails to sustain the allega-

tions of the complaint, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Henry M. White*, trial examiner.

Mr. John N. Wheelock and *Mr. R. P. Bellinger* for the Commission.

Poe, Falknor, Emory & Howe, of Seattle, Wash., for respondent.

JOSEPH A. VILLONE trading as EXCELSIOR HAT WORKS. Complaint, June 6, 1932. Original order, November 7, 1933. Docket 2046, 18 F. T. C. 116. Order setting aside, etc., August 4, 1939.

Charge: Misbranding or mislabeling and misrepresenting product as to renovated being new; in connection with the sale of hats.

Cease and desist order in this case was set aside 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 order to cease and desist issued herein on the 7th day of November A. D. 1933, be, and the same hereby is, set aside.

It is further ordered, That an amended ond supplemental complaint herein be issued and served forthwith.

Mr. Robert Mathis, Jr., for the Commission.

Mr. Louis R. Kagan, of Jersey City, N. J., for respondent.

MORBEN HAT WORKS, INC. and MORRIS S. ALTMAN, individually and as an officer of MORBEN HAT WORKS, INC. Complaint, June 6, 1932. Original order, November 7, 1933. Docket 2048, 18 F. T. C. 116. Order setting aside, etc., August 4, 1939.

Charge: Misbranding or mislabeling and misrepresenting product as to renovated being new; in connection with the sale of hats.

Cease and desist order in this case was set aside 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 order to cease and desist heretofore issued in the matter of Morben Hat Works, inc., a corporation, Docket No. 2048, on the 7th day of November 1933, be and the same hereby is, set aside.

It is further ordered, That the matter of Morben Hat Works, Inc., a corporation, designated in the records of the Commission as Docket No. 2048, be, and the same hereby is, consolidated with the matter of

Morben Hat Works, Inc., a corporation, Morris S. Altman, individually and as an officer of Morben Hat Works, Inc., designated in the records of the Commission as Docket No. 3838.

Mr. Robert Mathis, Jr., for the Commission.

JACOB SCHACHNOW trading as MODERN HAT WORKS. Complaint, June 6, 1932. Original order, November 7, 1933. Docket 2047, 18 F. T. C. 116. Order setting aside, etc., August 10, 1939.

Charge: Misbranding or mislabeling and misrepresenting product as to renovated being new; in connection with the sale of hats.

Cease and desist order in this case was set aside 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 order to cease and desist issued herein on the 7th day of November 1933, be, and the same hereby is, set aside.

It is further ordered, That an amended and supplemental complaint herein be issued and served forthwith.

Mr. Robert Mathis, Jr., for the Commission.

SHAPIRO FELT RUG CO. AND WM. SHAPIRO, MORRIS SHAPIRO AND SARAH SHAPIRO TRADING AS ESTA HAT CO. Complaint, December 6, 1935. Original order, January 3, 1936. Docket 2647, 21 F. T. C. 741. Order setting aside, etc., August 16, 1939.

Charge: Misrepresenting reconstructed or reconditioned used products as new; in connection with the sale of baseball caps.

Cease and desist order in this case was set aside 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 order to cease and desist issued herein on the 3d day of January A. D. 1936, be, and the same hereby is, set aside.

It is further ordered, That an amended and supplemental complaint herein be issued and served forthwith.

Mr. Robert Mathis, Jr., for the Commission.

PACIFIC AMUSEMENT MANUFACTURING CO., and trading as PACIFIC MANUFACTURING CORP. Complaint, October 25, 1937. Order, September 5, 1939. (Docket 3255.)

Charge: Using lottery scheme in merchandising; in connection with the sale of chewing gum and chewing gum vending machines.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent corporation has been dissolved, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission should future facts so warrant to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. D. C. Daniel for the Commission.

Bank & Scribner, of Chicago, Ill., for respondent.

BRINKER CANDY CORP. Complaint, April 29, 1938. Order, September 8, 1939. (Docket 3395.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent corporation is no longer in existence, having been dissolved by operation of the laws of the State of Illinois, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission should future facts so warrant to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. D. C. Daniel for the Commission.

HELLER & NEWMAN, INC. Complaint, July 26, 1939. Order, September 16, 1939. (Docket 3859.)

Charge: Misbranding or mislabeling as to composition or source or origin; in connection with the sale of ladies' coats.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the respondent has been dissolved, 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 herein be, and the same hereby is, closed.

Mr. R. P. Bellinger for the Commission.

Mr. Irwin D. Davidson, of New York City, for respondent.

UNIVERSAL DETECTIVE SYSTEM, INC. Complaint, June 21, 1939. Order, September 19, 1939. (Docket 3829.)

Charge: Advertising falsely or misleadingly as to opportunities, employment, free product, business status, unique nature, etc.; in connection with the sale of courses of study and instruction in detective work.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent, Universal Detective System, Inc., is no longer engaged in the business in regard to which the complaint herein was issued and that the said corporation has been dissolved in an action instituted by the attorney general of Illinois for failure to file annual report and pay annual franchise tax for the year 1938, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. Harry D. Michael for the Commission.

TRY-MO RADIO CO., INC. Complaint, June 29, 1935. Order, September 23, 1939. (Docket 2483.)

Charge: Advertising falsely or misleadingly as to qualities or properties of product; in connection with the sale of radios and equipment and supplies therefor.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent, Try-Mo Radio Co., Inc., agreed on July 24, 1939, to discontinue the unfair practices charged in the complaint and agreed to accept and abide by the rules of fair trade practice for the radio receiving set industry, promulgated by the Commission July 22, 1939, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. Carrel F. Rhodes for the Commission.

Mr. Samuel Ansel, of New York City, for respondent.

ROBERT E. WATERMAN, trading as NATIONAL POTTERY DISTRIBUTORS. Complaint, February 16, 1938. Order, October 2, 1939. (Docket 3338.)

Charge: Misrepresenting product as to special or limited offer and free gift and disparaging competitors' products; in connection with the sale of earthenware kitchen utensils.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that all efforts to locate the respondent have been unsuccessful for the reason that he has no permanent residence or place of business, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. William L. Pencke for the Commission.

HARRY G. CISIN, trading as ALLIED ENGINEERING INSTITUTE. Complaint, May 8, 1935. Order, October 7, 1939. (Docket 2383.)

Charge: Advertising falsely or misleadingly as to qualities or properties of product; in connection with the manufacture and sale of radios.

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, Harry G. Cisin, individually and trading as Allied Engineering Institute, has suspended the manufacture and sale of radio receiving sets and has discontinued the practices charged in the complaint, and on September 19, 1939, submitted a statement adopting and agreeing to abide by the rules of practice for the radio receiving set manufacturing industry promulgated July 22, 1939, in the future conduct of his radio business, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

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

Mr. John L. Hornor and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Jack Korshin, of New York City, for respondent.

W. A. NIEUWENHUIS & SONS. Complaint, May 9, 1939. Order, October 7, 1939. (Docket 3787.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to source or origin of product; in connection with the sale of tulip bulbs.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is 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, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. William L. Pack for the Commission.

Howard, Howard & Howard, of Kalamazoo, Mich., for respondents.

MAF HAT WORKS, INC. Complaint, January 19, 1931. Original order, June 17, 1933. Docket 1897, 17 F. T. C. 373. Order setting aside, etc., October 12, 1939.

Charge: Misbranding or mislabeling and misrepresenting product as to renovated or rebuilt being new; in connection with the sale of hats.

Cease and desist order in this case was set aside by the following order:

This matter coming on to be heard by the Commission upon the motion of W. T. Kelley, chief counsel for the Commission, and Robert Mathis, Jr., trial attorney, that the findings as to the facts and conclusion and order to cease and desist issued by the Commission on June 17, 1933, be set aside and that an amended and supplemental complaint be issued herein, and that all testimony and other evidence adduced at hearings heretofore held in this proceeding be received and considered in so far as material and competent in any findings as to the facts hereinafter made herein, in like manner and to the same extent as though said testimony and other evidence had been received at hearings duly held upon the charges contained in the amended and supplemental complaint in the first instance; and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises;

It is ordered, That the findings as to the facts and conclusion and order to cease and desist issued herein on the 17th day of June A. D. 1933, be, and the same hereby are, set aside.

It is further ordered, That an amended and supplemental complaint herein be issued and served forthwith.

It is further ordered, That all testimony and other evidence adduced at hearings heretofore held in this proceeding be received and considered, in so far as material and competent in any findings as to the facts hereinafter made, in like manner and to the same extent as though said testimony had been received at hearings duly held upon

the charges contained in the amended and supplemental complaint, in the first instance, saving, however, to the respondents the right to rebut such testimony or other evidence by any proper means at such subsequent hearings as may be held herein.

Mr. Robert Mathis, Jr., for the Commission.

ROBERT THEODORE PLATE, trading as PLATE MANUFACTURING CO. Complaint, July 28, 1938. Order, October 17, 1939. (Docket 3515.)

Charge: Misrepresenting product as to qualities and government approval; in connection with the sale of "Kant-Run" and "HoSaver," chemical preparations, designed and intended for the laundering of silk and rayon stockings and lingerie.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the complaint and the answer, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should conditions warrant.

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

Mr. Merle P. Lyon for the Commission.

Barthel, Flanders & Barthel, of Detroit, Mich., for respondent.

MAID-O-BEST, INC., G. M. MOSES; and MORRIS AVERBACH, trading as THE MURIEL CO. Complaint, April 9, 1934. Order, October 26, 1939. (Docket 2168.)

Charge: Misrepresenting business status and advantages, agents' earnings or prospects, prices, values, quality, and composition of product and guarantee of satisfaction or money back; in connection with the manufacture and sale of flavoring compounds, foodstuffs, toilet articles, and novelties.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that all of the respondents herein are likewise respondents in another proceeding before the Commission, to-wit, Docket 3342, wherein the Commission on September 11, 1939, issued its order to cease and desist,[1] and that said order to cease and desist prohibits the respondents herein from engaging in the identical practices involved herein, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the

[1] See, *supra*, p. 879.

same and resume prosecution thereof in the event the facts so warrant.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Marshall Morgan for the Commission.

Stacker & Stacker, of St. Paul, Minn., for respondents.

SCHENLEY DISTILLERS CORP. Complaint, June 12, 1937. Order, November 18, 1939. (Docket 3150.)

Charge: Acquiring stock in competitor in violation of section 7 of the Clayton Act; in connection with the distilling, blending, rectifying, bottling, purchasing, warehousing and sale of whiskies and other distilled spirits.

Dismissed, 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 subsequent to issuance of the complaint but prior to the taking of testimony, Bernheim Distilling Co., a Delaware corporation, transferred all of its assets to the respondent which in turn transferred the same to another subsidiary, the George T. Stagg Co., and Bernheim Distilling Co., a Delaware corporation, has been dissolved, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint be, and the same hereby is, dismissed without prejudice upon the authority of the decision of the United States Supreme Court in *Arrow-Hart and Hegeman Electric Co.* v. *Federal Trade Commission*, 291 U. S. 587, which decided that the Commission has no power to require a corporation to divest itself of assets of another corporation acquired prior to the issuance of the Commission's order.

Before *Mr. John J. Keenan*, *Mr. Charles P. Vicini* and *Mr. Robert S. Hall*, trial examiners.

Mr. Everett F. Haycraft and *Mr. PGad B. Morehouse* for the Commission.

Chadbourne, Wallace, Parke & Whitside, of New York City, and *Mr. William Stanley*, of Washington, D. C., for respondent.

INTERNATIONAL RADIO CORP., WIEBOLDT STORES, INC., and DAVEGA-CITY RADIO, INC. Complaint, September 17, 1938. Order, November 18, 1939. (Docket 3592.)

Charge: Advertising falsely or misleadingly as to nature, quality, and value of product; in connection with the manufacture and sale of radio receiving sets and radio parts.

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 respondents, International Radio Corporation, Wieboldt Stores, Inc., and Davega-City Radio, Inc.,

have agreed to discontinue the unfair practices charged in the complaint and agreed to accept and abide by the rules of fair trade practice, for the radio receiving set manufacturing industry, promulgated by the Commission July 22, 1939, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future acts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Feldman & Kittelle, of Washington, D. C., for International Radio Corp.

Scandrett, Tuttle & Chalaire, of New York City, for Davega-City Radio, Inc.

JAMES S. SUTTON, INC., and JAMES S. SUTTON. Complaint, December 21, 1938. Order, November 18, 1939. (Docket 3671.)

Charge: Misrepresenting product as to nature, or nature of manufacture; in connection with the sale of towels, handkerchiefs, table cloths, and various linen goods.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

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

Mr. M. C. Pearce for the Commission.

Mr. Jacob Ansbacher, of New York City, and *Mr. Henry Hobart Benjamin*, of Washington, D. C., for respondents.

JAMES T. JARRELL, doing business as STANDARD BUSINESS TRAINING INSTITUTE. Complaint, September 27, 1937. Order, November 28, 1939. (Docket 3231.)

Charge: Using misleading trade name and misrepresenting business status and connections and opportunities in product or offering; in connection with the sale of a correspondence course for traffic inspectors or checkers.

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

W. W. KIMBALL CO.; BEN F. DUVALL; GEORGE H. KRANZ; and VICTOR G. WILLIAMS doing business as WILLIAMS MUSIC STORE. Complaint, June 14, 1937. Order, November 29, 1939. (Docket 3151.)

Charge: Combining or conspiring to misrepresent prices and values or quality and circumstances of sale of product; in connection with the manufacture and sale of pianos.

Dismissed, after answer and trial, by the following order:

This matter coming on for hearing before the Commission upon the record and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Arthur F. Thomas* and *Mr. W. W. Sheppard*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Fyffe & Clark, of Chicago, Ill., for respondents.

STIPULATIONS [1]

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST [2]

2446. **Dog and Cat Food—Composition, Nature of Manufacture, Competitive Products, Etc.**—Joseph M. Julian Co., business trust estate trading under assumed names of Marney Food Co. and Dr. Marney's Animal Food Co., engaged in the manufacture of canned food for dogs and cats and in the sale and distribution thereof in interstate commerce, in competition with other commercial concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph M. Julian Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from representing

(*a*) That its dog food designated "Marco" or any product of similar composition is a beef food product, or a balanced beef food product, or is a completely balanced beef diet, or a properly balanced pet food, or a scientifically balanced dog and cat food.

(*b*) That said product is made under the personal supervision of Dr. F. L. Marney, or of any other person not associated or connected with the manufacturer thereof.

(*c*) That "Marco" quality has proven to be "best by test," when such is not the fact.

(*d*) That said product contains no starchy fillers, or that it contains more meat or less starch than competitive products, or that no

[1] For false and misleading advertising stipulations effected through the Commission's radio and periodical division. See p. 1511, et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, June 1, 1939, to November 30, 1939, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 28 of the Commission's decisions.

[2] In the interest of brevity there is omitted from the published digests of the published stipulations agreements 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, methods, or acts in question, or in event of issuance by Commission of complaint and institution of formal proceedings against respondent, as in the stipulation provided, such stipulation and agreement, if relevant, may be received in such proceedings as evidence of the prior use by the respondent or respondents of the methods, acts, or practices herein referred to.

dog and cat food in America contains more meat, when such are not the facts.

(*e*) That "Marco" contains no horse meat, featured in such a manner as to import or imply that the inclusion of horse meat in a dog food lessens its value, or in any other way having the effect of disparaging competitive products which include horse meat. (Oct. 5, 1939.)

2481. **Furniture, Mattresses, Etc.—Prices.**—Roberti Brothers, Inc., a corporation, engaged in the business of manufacturing various types of furniture, including mattresses, inner spring mattresses, and bed springs, 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 in commerce as set forth therein.

Roberti Brothers, Inc., in connection with the conduct of its business in commerce as defined by said Act, agreed to cease and desist from offering for sale, selling or supplying customers with products to which are affixed or which bear any price purporting to be the retail selling price of the product, when in fact such price is not the regular retail selling price thereof but is in excess of the price at which the product is actually or customarily offered for sale and sold in the usual course of retail trade. (June 5, 1939.)

2482. **Correspondence Courses—Business Status, Opportunities, Employment, Prices, Etc.**—Thomas J. Casey, an individual trading as National Institute of Technology, engaged in the sale and distribution in interstate commerce of a correspondence course of instruction which he styles "Electronic Engineering" in competition with other individuals, corporations, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Thomes J. Casey, in connection with the sale and distribution of his course of instruction in commerce as defined by said act, agreed to cease and desist from

(*a*) The use in his trade name or in any other manner as applied to his school or to any affiliated radio club or society, of the words "Institute" and "Technology," either alone or in connection with any other word or words; or the use of any similar term, title or designation the effect of which is to import or imply or cause the belief that such school either gives or is equipped to give technological courses of instruction, or instruction other than trade or vocational; or that either said trade school or such radio club is an institution or organization for the promotion of learning, philosophy, arts, or science, or is a national institute or association of technologists organized for the purpose of considering and solving their problems as such.

(*b*) Overstating and misrepresenting the demands and opportunities for employment, in the electronic or radio and allied fields; or making any representations, printed, spoken or pictorial, the effect of which is to convey the belief that the opportunities for those who take the instruction course sold by him exceed the facts.

(*c*) Using in his advertising matter or in talks by his solicitors, overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions or future security of his graduates and students.

(*d*) The use of statements or representations either printed or spoken, importing or implying or tending to cause the belief that he is in position to offer employment to his graduates or to place all graduates, or will procure employment for students or graduates; when such are not the facts.

(*e*) Representing, either directly or indirectly, that any person, though lacking in proper education, experience, or aptitude, can become a competent and expert electronic or radio man by taking his course of instruction.

(*f*) Representing that the course offered by him is "full," "Thorough" or "complete," or will equip one generally for any position in the electronic or radio field; or that the course includes any "specialized training of a peculiar character," or can make the student an "expert" before completing his studies or a "trained electronic engineer" upon completion, or at all; or give the student "a broad knowledge which qualifies him to design equipment too complicated for the average man of limited training to understand," or any technological or exceptional knowledge beyond that imparted by a trade school for radio operators and mechanics.

(*g*) Representing that his school is equipped to supply competent engineers, or any engineers, to meet the demand for modern radio design, or for the various highly technical and specialized jobs in radio, television, and allied fields.

(*h*) Representing that the student will acquire "extensive practical experience by the use of the few simple items of equipment furnished with the course, or will receive remunerative employment or special paying assignments; or that the purported training thus gained is so thorough that he is well on the road to success before completing the course; or that with such alleged training he will be qualified to fill high positions, or to receive "any Government license"; or that his home experimentation will be supervised and aided by "highly trained and qualified field engineers" or by any other personal instruction; when such are not the facts.

(*i*) The use of any name, title, or other designation such as "President," "Technical Director," "Assistant Technical Director," "Labora-

tory Director," "Student Welfare Director," "Educational Committee" or "Auditing Division," having the tendency or capacity to mislead students, prospective students or the public as to the character, organization and extent of his school.

(*j*) The use of the title "Registrar" in referring to his sales agents, or of any other word or words the effect of which is to import or imply that such representatives have any official or other capacity than that of salesmen of the course of instruction offered by him; or the use of the title "Field Engineer" for employees who are not in fact duly qualified engineers and who do not function professionally as engineers in the field.

(*k*) Designating his course as "Electronic Engineering" or as "engineering," or his graduates as "Electronic Engineers" or as "engineers," so long as his school does not maintain the full curriculum of approved engineering schools and its graduates have not the status and standing of graduate engineers.

(*l*) Stating or otherwise representing that "some of the best engineers in this country" collaborated in preparing the course offered for sale by him; or that such alleged best engineers spend many months in research, experiments, and testing before writing the lessons; or that "a staff of engineers" then checked over each lesson carefully to correct inaccuracies and simplify the text; when such are not the facts.

(*m*) The making of any other misleading or deceptive statements or representations, by way of advertising, oral presentation, or otherwise, concerning the character, nature, quality, value, or scope of the course of instruction or educational service offered by him, or in any other material respect, with the tendency or capacity to mislead or deceive students, prospective students or the public.

(*n*) Referring to the certificate issued by his school as a "diploma" when it is not in fact a diploma; or issuing any "certificate" or similar document which represents the course of study or instruction covered or completed, or the accomplishments or standing of the student receiving such certificate or document, in a manner having the capacity or tendency to mislead students, prospective students or the public.

(*o*) Promising that equipment will be furnished the student for a home laboratory when such equipment is not always furnished; or representing by his salesmen or otherwise that the person solicited will be the only one in his community to receive such home laboratory equipment when in fact the enrollment contract includes such equipment for all students.

(*p*) Quoting a figure purporting to be the actual or genuine value of the home laboratory equipment or other merchandise which is in

excess of the price for which said articles are sold or can be obtained in the usual course of business.

(*q*) Listing or naming, in printed advertising or oral presentation, any position, dignity or rank in the radio and allied fields which "N. I. T. Trained Electronic Engineers Become," that has not in fact been attained by students of his course as the result of the instructions received.

(*r*) Representing that a fictitious price for the course is the actual price to be charged; or designating the real charge as a "training fee merely" and the mark-up as a "deferred tuition charge" to be paid only after the student has obtained a position at $125 per month or $150 per month or any other sum, so as to import or imply or reasonably infer that such job is sure or probable; or representing that such alleged deferred tuition privilege is a new or remarkable offer.

(*s*) Representing by direct statement or by reasonable inference, that employment is "guaranteed," or designating his so-called employment service as "guaranteed Lifetime Employment Service"; or using of the words "guarantee" or "guaranteed" unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security.

(*t*) Advising or encouraging prospective students to borrow money with which to pay for said course, and/or representing that the money so borrowed "will multiply tomorrow's wages."

(*u*) Representing by pictorial delineation or otherwise, that his school occupies the whole of a building so depicted, when such is not the fact.

(*v*) The use in his printed matter, oral presentations or otherwise, of statements or representations which convey or may tend to convey the belief to students, prospective students or the public that the school conducted by him owns, operates, and controls an amateur radio station designated by call number W9VXZ or any other radio station for its curricular purposes; or that use of the said or any other radio station or call number is or may be available to unlicensed students for the purpose of actually practicing thereon and operating the same; or inferentially or otherwise, that the said school has the right or authority to operate or control the operation of the transmitting equipment of an amateur radio station even though it may own such equipment. (June 6, 1939.)

2483. **Incandescent Lamps—Manufacturer.**—Lester Kulp, individually trading under his own name and as the Kulp Lamp Co., engaged in the sale and distribution of incandescent lamps 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 in commerce as set forth herein.

Lester Kulp, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from the use on his letterheads, invoices or otherwise of the words "Manufacturer of" or of any other word or words of similar meaning as descriptive of the business in which he is engaged or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that he makes or manufactures the products offered for sale and 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. (June 12, 1939.)

2484. **Rayon Goods—Manufacturer.**—Martin Weiner, sole trader operating as Martin Weiner Co., engaged in sale and distribution of rayon goods to manufacturers of dresses and shirts and to retail stores in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Martin Weiner, in connection with his sale of merchandise in commerce as defined by said act, agreed to cease and desist from representing that he is a manufacturer of silk or rayon or any other products; and from the use in any way of the word "manufacturers," either alone or in connection or conjunction with any other word or words so as to import or imply that the said Martin Weiner 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 are not the facts. (June 26, 1939.)

2485. **Rayon Fabrics—Composition and Manufacturer.**—Commercial Silk Co., a corporation, engaged in the manufacture of rayon fabrics and in the sale and distribution thereon 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 in commerce as set forth therein.

Commercial Silk Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use of the word "Silk" as part of the corporate or trade name under which it carries on business and from the use of the term "manufacturers of silks", or similar expressions, in any way which may have the capacity or tendency to confuse, mislead, or deceive the trade and the public into the belief that the business of said concern is primarily that of the manufacture and sale of silk fabrics, when such is not the fact. (June 26, 1939.)

2486. **Kitchen Utensil—Manufacturer.**—W. Earl Cary, an individual trading as Cary Manufacturing Co., engaged in sale and dis-

tribution in commerce of a kitchen utensil which he designates "The Cary Vapor Cooker," in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

W. Earl Cary, in connection with his sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "manufacturing" as part of or in connection or conjunction with the trade name or names under which he advertises, offers for sale or sells his merchandise in interstate commerce; and from the use of the word "manufacturing" or of any other word of similar meaning so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that said individual makes the merchandise sold by him; or that he actually owns and operates or directly and absolutely controls the plant or factory in which said merchandise is made, when such is not the fact. (June 28, 1939.)

2487. **Dog Food—Composition.**—Foster Canning Co., Inc., a corporation engaged in business of selling various brands of dog food, including one designated "Dr. Olding," 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 in commerce as set forth therein.

Foster Canning Co., Inc., in connection with the offering for sale, sale, and distribution of its product in commerce as defined by said act, agreed to cease and desist from the use on its labels or in its advertisements and advertising matter or otherwise of the words "A Meat Food Product" as descriptive of said product which is not composed wholly of meat; and from the use of the word "meat" either alone or in connection or conjunction with the words "food product" or with any other word or words or in any way so as to import or imply that the product to which said word or words refer is composed wholly of meat, when such is not the fact. If the product is composed in substantial part of meat, and the word "meat" is used to describe such meat content, then in such case, the word "meat" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said product is not composed wholly of meat but is composed in part of ingredients other than meat. Said corporation also agreed to cease and desist from the use of its advertisements and advertising matter or in any other way of statements or representations which directly assert or clearly import or imply that its product contains more real fresh beef or

meat than products of its competitors, when such is not the fact. (July 1, 1939.)

2488. **Grave Vaults—Qualities and Guarantee.**—Sozonian Vault Co., a corporation, engaged in the business of manufacturing metal grave vaults and in sale thereof through medium of agents or salesmen, 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 in commerce as set forth therein.

Sozonian Vault Co., in connection with the offering for sale, sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from causing the exhibition or sanctioning the exhibition by its salesmen or representatives of photographs or any pictorial or other representation of the products of its competitors or of the competitive products themselves or of any printed matter relating thereto, the effect of which tends or may tend to falsely represent such competitive products. Said corporation also agreed to cease and desist from the use in its printed or advertising matter or in any other way of statements or representations to the effect that its products will afford or assure enduring or permanent protection to the caskets or bodies encased therein, or that said products are and will remain permanently or everlastingly rust or waterproof, when such statements or representations are not warranted in view of the various soil, climatic and other burial conditions under which interments of said products are or may be made. Said corporation also agreed to cease and desist from the use of any statement, representation or alleged guarantee which tends or may tend to convey an erroneous belief to purchasers with respect to the durability under ground of its products or as to the length of time that said products will afford protection under any and all burial conditions. (July 6, 1939.)

2489. **Hair Preparations—Qualities.**—Lorraine Ramsey, an individual, engaged in the business of compounding various hair preparations from ingredients purchased by her from others 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 in commerce as set forth therein.

Lorraine Ramsey, in connection with the offering for sale, sale and distribution of her products in commerce as defined by the said act, agreed that she will forthwith cease and desist from the use in her advertisements and advertising matter of whatever kind or character, or in any other way of any statement or representation which directly asserts or which clearly imports or implies or the effect of which tends or may tend to convey the belief to purchasers

that said products, or any thereof, when locally applied to the scalp, will cause hair to grow or will promote the growth of hair or will effectively prevent or cure baldness or cause the growing of hair on bald heads. (June 16, 1939.)

2490. **Watch Spring Products—Manufacturer.**—Charles Monnat, sole trader, engaged in the importation, sale, and distribution of Swiss watch mainsprings 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 in commerce as set forth therein.

Charles Monnat, in connection with his sale and distribution of watch spring products in commerce as defined by said act, agreed to cease and desist from the use of the word "manufacturer" or of any other word of similar meaning so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the products sold by him are made in a plant or factory which he owns or operates or directly and absolutely controls, when such is not the fact. (July 11, 1939.)

2491. **Bakery Products—Lottery Scheme and Devices.**—Hitchner Biscuit Co., a corporation, engaged in the sale and distribution in commerce of bakery products including cakes and cookies together with picnic lunch boxes allegedly given as premiums to purchasers of its 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 in commerce as set forth therein.

Hitchner Biscuit Co., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the said act, agreed to cease and desist from

1. Supply to or placing in the hands of others lottery cards or devices for the purpose of enabling such others to dispose of or sell any merchandise by the use thereof.

2. Shipping, transporting, or mailing to the trade or members of the public lottery cards or devices so prepared or printed as to enable such person to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of lottery cards or devices.

4. The use of any scheme, plan, or method of sale or of promoting the sale of merchandise which involves the use of any gift enterprise, lottery, or scheme of chance by which an article or thing of value is given as a prize or premium for or in consideration of the purchase of any other article. (July 12, 1939.)

2492. **Bronze Powder Product—Composition.**—George Lerch, an individual, trading as T. Riessner, engaged in the sale and distribution of bronze powder in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

George Lerch, in connection with the offering for sale, sale, and distribution of his bronze powder product in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use on labels affixed to the containers of said product or in any other way of the word "Aluminum" either alone or in connection with the word "pure" or with the words "Chemically pure" or with any other word or words so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said product is composed of aluminum or of pure aluminum or of chemically pure aluminum, as such terms are generally understood and accepted to mean by the trade and purchasing public. If the product is composed in substantial part of aluminum, and the word "aluminum" is used to designate the same, then in that case, the said designating word shall be immediately accompanied by some other word or words printed in equally conspicuous type so as clearly to indicate that the said product is not composed wholly of aluminum but is composed or compounded in part of an ingredient other than aluminum. (July 14, 1939.)

2493. **Feminine Preparation—Qualities.**—Howard Drug and Medicine Co., a corporation, engaged in the sale and distribution of pills or tablets designated "Planters' Monthly Regulating Pills" later changed to "Planter's Benedicta Tablets," 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 in commerce as set forth therein.

Howard Drug and Medicine Co., in connection with the offering for sale, sale, and distribution of its preparation in commerce as defined by said act, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or character disseminated in commerce of statements or representations which directly assert or import or imply that the said preparation will correct all, or any, irregularities of the menses or monthly flow, or will make woman's pains unnecessary, or that the use of said preparation will have any beneficial effect in such conditions other than as a purgative in cases of intestinal stasis. (July 14, 1939.)

2494. **Food Fish Products—Nature.**—Hudgins Fish Co., a corporation, engaged in the sale and distribution of salt water fish, crabs, crayfish, etc., 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 in commerce as set forth therein.

The true American lobster is found only along the North American Coast from North Carolina to Labrador. It is more abundant and attains its greatest size in the northerly part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustaceans of the genus Homarus. Another type of marine macrurous crustacean of the genus Palinurus is found in Southern waters and variously referred to as sea crayfish, spiny lobster, and rock lobster. The North American lobster is noted for its smooth white meat, delicate taste, and tender quality, and has long been esteemed by the American people as a seafood delicacy. The meat of the sea crayfish is similar in appearance to that of the lobster but is tougher and rougher in texture and somewhat stringy. The term "Lobster" has long been associated in the minds of the consuming public with the genus Homarus. As such real lobster is becoming scarcer from year to year, its value as a seafood delicacy has increased.

Hudgins Fish Co., in connection with its sale and distribution of food fish products in commerce as defined by said act, agreed to cease and desist from listing, invoicing or otherwise representing sea crayfish as "Southern Lobster," "Fresh Picked Fancy Lobster," or "Lob. Meat," or otherwise designating the same in a manner whereby retailers may offer it to the public as "Fresh Fancy Lobster" or as lobster meat; and from the use of the word "Lobster" either alone or in connection with any other word or words so as to import or imply or the effect of which is to convey or tend to convey the belief to purchasers that the food fish so referred to is that species known as lobster of the genus Homarus, when such is not the fact. (July 14, 1939.)

2495. **Medicinal Preparations—Qualities, Results and Testimonials.**—Hagen Import Co., a corporation, engaged in sale and distribution in interstate commerce of products including certain medicinal preparations, 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 in commerce as set forth therein.

Hagen Import Co. and its officers, H. E. Becker, Mrs. Anna Becker, and Arthur K. Lueders, in connection with the sale and distribution

of their products in commerce as defined by said act, agreed to cease and desist from representing

(*a*) That their "Balsam Breath Filter Inhaler" or any similar product is a competent treatment or an effective remedy for asthma, hay fever, catarrh, or sinus trouble; or that it brings instant, immediate, or quick relief from such conditions; or that the results obtained therefrom are complete, marvelous, wonderful, or more efficacious than the Pine Forests in the Northwoods; or otherwise, that its action is preventive, curative or satisfactorily palliative for allergic or other respiratory diseases.

(*b*) That "Hagen's Blood Purifying Tea" or any similar product is a competent treatment or an effective remedy for impure blood; or that it will purify the blood, drive all poisonous waste matter out of the system, counteract the harmful effects of wrong diet, poor digestion, faulty elimination, acid forming foods, worry, bad ventilation, over-activity, or over indulgence in drinking or smoking; or either directly or inferentially that such preparation is efficacious or of any material value whatsoever for cases of rheumatism, gout, arthritis, high blood pressure, stomach trouble, kidney and bladder ailments, indigestion, constipation, piles, frequent colds, catarrh, asthma, hay fever, skin eruption, bad complexion, or any other ailment.

(*c*) That the main causes of impurities in the blood are wrong diet, poor digestion, and faulty elimination, or that more than 90 percent of our common ailments may be traced to these causes; or that the average diet of most people at the present time is an acid forming food which slowly but surely loads the blood with poisonous acids responsible for a multitude of chronic ailments.

(*d*) By direct statement or by reasonable implication that "Hagen's Bronchial and Asthma Tea" or any similar preparation is a competent treatment or an effective remedy for hay fever or asthma, or is efficacious for any bronchial, asthmatic, or membranous ailments.

Said parties further agreed to cease and desist from the publication of any representations quoted from testimonial letters which may be contrary to the terms of this agreement. (July 17, 1939.)

2496. **Seam Bindings, Novelty Trimmings, Etc.—Composition.**—William E. Wright & Sons Co., a corporation, engaged in the business of manufacturing seam bindings, including bias tapes, rickrack (braid), frillings, and novelty trimmings, 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 in commerce as set forth therein.

William E. Wright & Sons Co., in connection with the sale and distribution and the offering for sale of its products in commerce as

defined by the Federal Trade Commission Act, agreed to cease and desist

1. From the use of the word "Taffeta" to describe a product not composed of silk, the product of the cocoon of the silk worm, and from the use of the said word or of any other silk-connoting word either alone or in connection with any other word or words so as to import or imply that the product referred to is composed of silk, when such is not the fact. If the word "Taffeta" is used properly to describe the type of construction of a rayon or celanese rayon fabric, then in such case, the word "Taffeta" shall be immediately accompanied by the word "rayon" or the words "celanese rayon" printed in equally conspicuous type so as to indicate clearly that said product is in fact rayon or celanese rayon, as for example, "Rayon Taffeta" or "Celanese Rayon Taffeta."

2. From advertising, branding, or labeling a rayon or celanese rayon product as being something other than such rayon.

3. From advertising, branding, labeling, or invoicing a product composed of rayon or celanese rayon without making full and nondeceptive disclosure of the fact that said product is composed of rayon or celanese rayon. (July 18, 1939.)

2497. **Casein Glue—Qualities.**—Consumers Glue Co., a corporation, engaged in the manufacture of casein glue and in 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 in commerce as set forth therein.

Consumers Glue Co. in connection with the sale and distribution of its products in commerce as defined by said Act, agreed to cease and desist from the use on its labels or in its advertising matter of the word "waterproof" when in fact said product is not waterproof; and from the use of the word "waterproof" or any other word or statement of similar meaning so as to import or imply that the product thus referred to is impervious to the effect of water, when such is not the fact. (July 20, 1939.)

2498. **Hosiery—Composition.**—Slatedale Knitting Mills, Inc., a corporation, with business of manufacturing children's hosiery and in 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 in commerce as set forth therein.

Slatedale Knitting Mills, Inc., in connection with its sale and distribution of hosiery in commerce as defined by said Act, agreed to cease and desist from

(*a*) Stating or representing that said products are composed of fibers in any designated proportion, when such is not the fact.

(*b*) The use, in, on or in connection with its labels, brands, or other trade indicia of the word "wool" either alone or together with the word "rayon," or with any other word or words, as descriptive of hosiery not containing wool in substantial part. If the hosiery is composed of a mixture of fibers, as rayon and cotton with wool present in such small proportion as to be insubstantial, then, in such case the word "wool" in the statement of fiber content shall be immediately accompanied by suitable disclosure of the amount of wool actually present in said hosiery and also by the names of the other content fibers, arranged in the order of their predominance by weight and printed in type equally conspicuous; as, for example, "rayon, cotton and 5% wool."

(*c*) Branding, labeling, selling, or offering for sale any product composed of rayon and other kinds of fiber or substances without full and nondeceptive disclosure of the rayon and other content of such product, made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, and by giving the percentage of any fiber which is present in a proportion of 5 percent or less by weight; as, for example, "Cotton and Rayon."

(*d*) Branding, labeling, or otherwise designating a product as "Wooly Warm" or by similar designation in a manner the effect of which may be to import or imply or cause the belief that such product is wholly or predominantly composed of wool, or is as warm as wool, when such are not the facts. (July 24, 1939.)

2499. **Small Boats—Qualities.**—Harry T. Bedman and Chester N. Olson, copartners, trading under firm name and style, Alexandria Boat Works, engaged in manufacture of small boats for use on lakes and rivers, and in 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 in commerce as set forth therein.

Harry T. Bedman and Chester N. Olson, and each of them, agreed that in connection with their sale and distribution of boats in commerce as defined by said act, to cease and desist from the use in their advertising matter or otherwise of statements or representations, the effect of which is to import or imply or tend to cause the belief that boats built with red cedar plankings are inferior to those planked with redwood; or that boats built of redwood planking will outwear two or three red cedar planked boats, or will outwear any such boats; or that red cedar is a cheaper material than redwood, when such statements and representations are not warranted by the facts and

are not supported by the weight of scientific evidence. (July 24, 1939.)

2500. **Novelties and Pull Tabs—Lottery Schemes and Devices.**—Ben Mermelstein, sole trader, doing business as Seaboard Novelty Co., engaged in the sale and distribution of merchandise novelties and pull tabs 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 in commerce as set forth therein.

Ben Mermelstein, in connection with his sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from

(*a*) Supplying to, or placing in the hands of others, punch boards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(*b*) Mailing, shipping, or transporting to agents or to distributors or members of the public punch boards, push, or pull cards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

(*c*) Selling or otherwise disposing of any merchandise by the use of punch boards, push or pull cards or other lottery devices. (July 24, 1939.)

2501. **Kayaks, Rowboats, Etc.—Unique Nature, Qualities, Patented and Safety.**—Frederick Stockhausen, sole trader under the name and style of Kayak Boat Co., engaged in the manufacture of Kayaks, rowboats, aquaplanes, ice-boats and small sailboats 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 in commerce as set forth therein.

Frederick Stockhausen, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from representing:

(*a*) That his plant or factory makes or builds kayaks exclusively, when such is not the fact.

(*b*) Either by direct statement or by inference that the kayaks made and sold by him are "non-sinkable" in all circumstances.

(*c*) Unqualifiedly, that the kayaks sold by him can be navigated through the "heaviest waters."

(*d*) That his kayak is so constructed that it is impossible for any wave to reach the deck and pour into the cockpit; or using any

similar statement to the effect that water can in no case enter the boat through the cockpit.

(*e*) That the construction of said boat is patented when such is not the fact, or that protection against imitation thereof is afforded by a copyright.

(*f*) That the design of said boat "eliminates all danger." (July 26, 1939.)

2502. **Listerine Antiseptic—Ailments, Qualities, Composition and Competitive Products.**—Lambert Pharmacal Co., a corporation, engaged in the manufacture of drug preparations, including a product designated "Listerine Antiseptic" 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 in commerce as set forth therein.

Lambert Pharmacal Co., in connection with the sale and distribution of its product Listerine Antiseptic in commerce as defined by said act, agreed to cease and desist from representing

(*a*) By direct statement or by inference, that all dandruff is due to an infection with Pityrosporon ovale or any other organism.

(*b*) That dandruff necessarily is a germ disease; or that "the" cause or the "true" cause, or by implication or otherwise the only cause, of dandruff is Pityrosporon ovale or any other germ; or that "the" dandruff germ has been isolated or identified; or that the presence of Pityrosporon ovale necessarily means dandruff, or that with its destruction dandruff disappears; or that dandruff is necessarily infectious, contagious or "catching" or is in all instances passed from one person to another; or that any of the foregoing has been so proven by the findings of scientists or otherwise, or is a "scientific fact" or a "fact definitely established" by scientists.

(*c*) That said product either cures or permanently relieves dandruff; or is a "positive" or "proven" dandruff cure or a "proved treatment" for dandruff, or one that "works"; or that by the use of said product one gets "rid" of dandruff, or that his dandruff is "gone" in 30 days or any other specified time; or that said product rids one of dandruff "for keeps"; or in any other way, either directly or impliedly, that it will permanently eliminate, eradicate, or remove dandruff from the head of the user.

(*d*) That said product "Kills the dandruff germ" in all instances, or that such is a "scientific fact" or has been "proved" by scientists; or that said product attacks "the" cause of dandruff, or "gets at the cause" or "at the root" of the trouble, or "masters" dandruff; or strikes deeper, or penetrates infected hair follicles; or "annihilates" the dandruff germ.

(*e*) That said product "frees" the scalp and hair follicles of the parasite that saps their vitality; or "spreads a germ-killing film over the scalp"; or that said product has "marked curative properties due to certain ingredients in a unique combination shared by no other antiseptic."

(*f*) That ordinary remedies "aren't even antiseptic"; are "Smelly," affect only surface symptoms, or merely remove the surface symptoms temporarily, or otherwise that competitive products are obviously inferior to said product as a remedy for dandruff—when such are not the facts. (July 28, 1939.)

2503. **Alka-Seltzer—Ailments and Qualities.**—Miles Laboratories, Inc., a corporation, engaged in the business of manufacturing various preparations, including a product designated "Alka-Seltzer" 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 in commerce as set forth therein.

Miles Laboratories, Inc., in connection with the offering for sale, sale and distribution of its commodity designated Alka-Seltzer, in commerce as defined by said act, agreed to cease and desist from the use in its advertisements or advertising matter, of whatever kind or character, of statements or representations the effect of which is to import or imply (1) that colds, neuralgia, distress after meals, and "common everyday ailments" result from, or are dependent upon, excess acidity of the blood, and acid condition of the blood, or deficient alkaline reserve of the blood, and that the alkalinizing effect of Alka-Seltzer, by correcting the acid condition of the blood or restoring the alkaline reserve of the blood of persons suffering from such ailments, or any of them, will correct, remedy, or be a proper treatment for the same; (2) that headaches, upset stomach, and aches and pains result from, or are associated with, excess acidity of the blood, an acid condition of the blood, or a deficiency in the alkaline reserve of the blood, except when such complaints may be shown by competent scientific evidence to be directly associated with such conditions of the blood, and that—subject to this exception—the taking of Alka-Seltzer by persons suffering from such complaints will correct or remedy or be a proper treatment for the same by correcting the acid condition of the blood or restoring the alkaline reserve of the blood; and (3) that other therapeutic effects of Alka-Seltzer exceed the recognized benefits to be derived from neutralization of hyper-acidity of the gastric contents and/or the analgesic and other effects of sodium acetylsalicylate together with the action of buffer salts. (July 31, 1939.)

2504. **Fabric Products—Composition.**—Vanetta Velvet Corp., a corporation, engaged as licensee under a patent or patents owned by Fur Resembling Fabrics Co., Inc., in the business of selling certain fabric 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 in commerce as set forth therein.

Vanetta Velvet Corp., in connection with the offering for sale, sale and distribution of products in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use on its labels or in any other way of the word "Fur" either alone or in connection or conjunction with the word "Tone" or with the picturization of a leopard or other fur-bearing animal, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said products so labeled or referred to are made from the skin or pelt of a leopard or fur-bearing animal or from a fabric of fur, when such is not the fact. (July 27, 1939.)

2505. **Dresses—Source or Origin.**—Joseph H. Goldstein and Moe Siegle, copartners, trading under firm name of Goldstein & Levin, engaged in manufacture of ladies' dresses and in sale and distribution thereof in interstate commerce, in competition with other firms, partnerships, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph H. Goldstein and Moe Siegle, and each of them, in connection with the sale and distribution of their products in commerce as defined by said act, agreed to cease and desist from representing either directly or indirectly, by words, symbols or otherwise, on labels, tags or other trade indicia or in any manner so as to import or imply or cause or tend to cause the belief that dresses or other articles of merchandise sold and offered for sale by them are made in or imported from London, England, or any other foreign country whatsoever, when such is not the fact. (Aug. 1, 1939.)

2506. **Pen Points—Composition.**—C. Howard Hunt Pen Co., a corporation, engaged in the manufacture of stationery supplies including fountain pen points and in 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 in commerce as set forth therein.

When pens are "tipped," the trade and the consuming public understand such designation to mean that the nib, or point, thereof is made of some superior hard metal different from the body of the

pen, to insure smooth-writing and lasting qualities. Originally all fountain pens were of high quality, equipped with solid 14 carat gold points, with the symbol "14 Kt." habitually stamped thereon, and the public has for years associated the symbol "14 Kt." with solid gold pen points. Where points are electroplated with carat gold, even though with a higher fineness than indicated, and stamped "14 Kt." in large and prominent letters with a small, explanatory legend "gold plated," the effect of such stamping is deceptive insofar as it imports or implies or tends to convey the belief that the pen point so branded is the regular solid gold point for fountain pens with which the public is familiar.

C. Howard Hunt Pen Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from

(*a*) The use of words such as "Durium", "durium Tipped", "Durium Pointed", "Duridium", or other words or expressions the effect of which is to import or imply or convey the impression that its pen points are made of or tipped with any purported substance fanciful or real, when such is not the fact.

(*b*) The use of such words as "Warranted Durium", "Warranted Durium Tipped", "Guaranteed Durium Tipped", or "Warranted Duridium" in any manner so as to import or imply or cause the belief that the article so branded or indicated is attested as having special or exceptional quality, when such is not the fact.

(*c*) The use of the mark "14 Kt." or symbols of similar import or meaning, stamped or branded on pen points or printed on the mounting cards thereof, either with or without the words "Gold Plated", when the gold content thereof is not actually of 14 carats fineness; or in any manner having the capacity or tendency to cause the belief or create the impression that the pen point so described is of 14 carat solid gold, when such is not the fact. (Aug. 7, 1939.)

2507. **Cooking Utensil—Business Status, Manufacturer, Competitive Products, Qualities and Ailments.**—Elmer E. Cary, individual, trading as Elmer E. Cary Co., engaged in the sale and distribution of a cooking utensil under trade designation "Cary Economy Cooker" 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 in commerce as set forth therein.

Elmer E. Cary, in connection with his sale and distribution of the "Cary Economy Cooker" in commerce as defined by said act, agreed to cease and desist from

(*a*) Holding himself out to be a doctor.

(*b*) Representing himself to be the manufacturer of the Cary Economy Cooker.

(*c*) Representing that he manufacturers utensils for, or to be sold to, the United States Government.

(*d*) Representing or causing to be represented through advertising literature, oral statements or in any other manner that the use of aluminum cooking utensils is deleterious to the health, is poisonous or that said use furthers the growth of cancer; and from making other statements or representations of similar tenor and effect falsely disparaging or tending falsely to disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

(*e*) Representing that the Cary Economy Cooker is the only perfect method known to medical science of preparing food.

(*f*) Representing that said Cary Economy Cooker is indispensible to the Housewife who wishes to keep her family in health; or that it can be relied upon to prevent the diseases of children or any other illness or affliction; or that acidosis is the basis of all diseases, or directly or inferentially that 90% of the sickness of mankind is due to the intake of acid forming foods.

(*g*) Representing that the Cary Economy Cooker is guaranteed to save the average family $5.00 a month or any other amount not determined by figures obtained in such a way as to verify the claims made. (Aug. 8, 1939.)

2508. **Fountain Pens—Composition and Guarantee.**—James Kelly, sole trader, trading as James Kelley Fountain Pen Co. and also as The Banker Pen Co., engaged in the assembling of fountain pens, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, corporations, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

When pen points are "tipped" or "pointed" the trade name and the consuming public understand such designation to mean that the nib, or the point thereof, is made of some superior hard material different from the body of the pen, so as to insure smooth writing and lasting qualities. Originally all fountain pens were of high quality equipped with fourteen carat solid gold pen points, with the symbol "14 Kt." habitually stamped thereon; and the public has for years associated such symbol "14 Kt." with solid gold pen points. Where pen points are electroplated with carat gold, even with a higher fineness than indicated and stamped "14 Kt." or "14 K." in large and prominent letters with a small explanatory legend "Gold Plate," the effect of such stamping is deceptive insofar as it imports or implies or tends to convey the belief that a pen point so branded is the regular solid gold point for fountain pens with which the public is familiar.

Only pens of high price and superior quality are sold with a bona fide "Life Time Guarantee," and responsible makers thereof replace pen points so warranted, if defective, without charge and without limitation as to time.

James Kelley, in connection with the sale and distribution of his pens in commerce as defined by said act, agreed to cease and desist from

(*a*) Use of the words as "Durium Pointed," or other words or expressions the effect of which is to import or imply or convey the impression that his pen points are made of or tipped with any purported substance, fanciful or real, when such is not the fact.

(*b*) Use of the mark "14 K." or symbol of similar import or meaning, stamped or branded on pen points or printed on the mounting cards or containers thereof, either with or without the words "Gold Plate" when the gold content thereof is not actually of 14 carat fineness; or in any manner having the capacity or tendency to cause the belief or create the impression that the pen point so described is of 14 carat gold solid, when such is not the fact.

(*c*) The issuance or dissemination of "Life Time Guarantee" certificates as pertaining to his merchandise; or the designating of any other representation or agreement as a guarantee, guaranty or warranty which involves a service charge or calls for the payment of additional money by the purchasers of such merchandise. (Aug. 11, 1939.)

2509. **Sparkling Water—Qualities.**—Jacob Ries Bottling Works, Inc., a corporation, engaged in the bottling of carbonated soft drinks, including a spring water carbonated and flavored with salts under the trade name or brand of "Sparkling Rock Spring Water," and in 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 in commerce as set forth therein.

Jacob Ries Bottling Works, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the representing either directly or inferentially that Sparkling Rock Spring Water or any similar product will prevent, counteract, or otherwise effectively avoid or eliminate an excessive acid condition in the system resulting from the intake of liquor. (Aug. 14, 1939.)

2510. **Beer—Nature of Manufacture and Source or Origin.**—Louis Eckert Brewing Co., a corporation, engaged in the business of brewing beer and in the sale and distribution thereof in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agree-

ment to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Louis Eckert Brewing Co., in connection with the offering for sale, sale, and distribution of 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 which directly assert or import or imply that quality beer cannot be made and sold in large quantities or that its beer products, or any thereof, are all brewed under the watchful eye, skillful hand, or personal supervision of Louis Eckert, president and brewmaster of Louis Eckert Brewing Co., when such are not the facts. The said corporation also agreed to cease and desist from the use, on labels affixed to its beer products, of the words "Cerveza-Exquisita Chapultepec" or of any other Mexican word or words or pictorial representation, the effect of which tends or may tend to convey the belief to purchasers that the said product is a Mexican beer, or a beer brewed in that country and imported into the United States of America, when such is not the fact. (Aug. 14, 1939.)

2511. **Ribbons, Etc.—Business Status, Mills.**—Louis Segal, an individual trading as New England Ribbon Mills, engaged in sale and distribution in commerce of merchandise, as ribbons, in competition with other individuals and with corporations, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

Louis Segal, in connection with his sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Mills" as part of the trade name under which he offers for sale, sells, or distributes his products in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "Mills" on his letterheads, business cards, invoices, or in any way so as to import or imply, or the effect of which tends or may tend to convey the belief to purchasers that he makes or manufactures the products offered for sale and sold by him, or that he actually owns and operates or directly and absolutely controls the mill or factory in which said products are made or manufactured, when such is not the fact. (Aug. 14, 1939.)

2512. **Electrical Appliances—Composition.**—Master Electric Co., a corporation, engaged in the business of manufacturing electrical appliances, including fans, 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 in commerce as set forth therein.

Master Electric Co. in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use of the word "rubber" or of any other rubber connoting word, either alone or in connection or conjunction with any other word or words as descriptive of the blades of said products which are not composed of rubber; and from the use of the word "rubber" in any way so as to import or imply that the blades of said products are made wholly of rubber, when such is not the fact. If the said blades are composed in substantial part of rubber and in part of material other than rubber, and the word "rubber" is used to describe such rubber part, then in that case the word "rubber" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said blades are not made wholly of rubber but are composed in part of material other than rubber. (Aug. 14, 1939.)

2513. **Ash Tray Sets, Etc.—Nature of Manufacture.**—A. Cohen & Sons Corp., a corporation, engaged in the business of selling at wholesale various types of novelty goods including nested ash tray sets, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. Cohen & Sons Corp., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the word "cut," 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 product thus referred to is cut by hand, when such is not the fact. (Aug. 17, 1939.)

2514. **Correspondence Course—Special or Limited Offers, Qualities and Results.**—Perry Jett LeRoy, sole trader, engaged in the sale and distribution in interstate commerce of a printed course of instruction under the trade designation "LeRoy's Easy Piano Lessons," 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 in commerce as set forth therein.

Perry Jett LeRoy, in connection with the sale and distribution of his course in instruction in commerce as defined by said act, agreed to cease and desist from representing

(*a*) That his sale offer is either "limited" or must be accepted "immediately" or is "for a short time only" or is "your last opportunity," or is "positively your last opportunity" to procure his course for $1 when such is not the fact; or in any other way whatsoever that the customary price for which said course has been regularly

sold is limited or special, or that it will not be available in the near future unless orders thereafter received at the price advertised are refused and the money returned to the senders.

(*b*) That any person without regard to aptitude or circumstance, can by taking his course play the piano within 5 weeks or any other specified time "as he (LeRoy) plays"; or unreservedly, that within such or any comparable time all those sending for the course will be gracefully playing the tunes they love.

(*c*) That thousands and thousands and thousands of men, women, and children have "learned to play" the piano through the aid of his course, or any other impressive number thereof not determined by figures obtained in such a way as to verify the claims made. (Aug. 15, 1939.)

2515. **Correspondence Courses—Government Connection.**—United Civil Service Training Bureaus, a corporation, engaged in conducting a correspondence school and in sale of courses of instruction intended to prepare students for examinations for Civil Service positions with the United States Government, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United Civil Service Training Bureaus, in connection with the sale and distribution of its courses of instruction in commerce as defined by said act, agreed to cease and desist from the use of the words "United," "Civil Service," "Bureaus," or "Bureau" as a part of or in connection with the corporate or trade name under which it carries on its business; and from the use of said words or any of them independently or in connection with other words or expressions, implying or suggesting any connection with the Civil Service Commission or the United States Government; or the making of such representations in any other manner. (Aug. 15, 1939.)

2516. **Glassware—Nature of Manufacture.**—J. Bennett, Inc., a corporation, engaged in the business of selling at wholesale various types of novelty goods, including inexpensive articles of glassware, in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. Bennett, Inc., in connection with the offering for sale, sale, and distribution of its glass ash trays or other pressed-glass merchandise in interstate commerce, agreed to cease and desist from the use of the word "cut," either alone or in connection or conjunction with any other word or words or in any way so as to import or imply or the effect of which tends or many tend to convey the belief to

purchasers that the product to which said word or words refer is cut by hand, as the term "cut" when used to described glassware is understood to mean to the trade and the purchasing public. (Aug. 17, 1939.)

2517. **Hosiery—Composition.**—Ruth Hosiery Mills, Inc., a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ruth Hosiery Mills, Inc., in connection with the sale and distribution of its hosiery products in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use on its brands, labels, transfers, or otherwise of the names of designated fibers "Rayon and Silk" as purportedly descriptive of products not composed throughout of such fibers; or as descriptive of hosiery the top, heel, and toe of which are composed of other materials. If silk, rayon, or other fiber is present in less than a substantial amount or is present in an amount not exceeding 5 percent by weight of the product, the name of such fiber when making disclosure of fiber content shall be accompanied by the percentage in which the same is present, or when confined to a decorative stripe shall be designated as being contained in such decoration, as, for example, "Rayon with decorative silk stripe." If the boot or leg is properly represented as rayon with decorative silk stripe but the top, heel and toe are composed of other materials, then such designation shall be immediately accompanied in type equally conspicuous by disclosure of the fiber content of the top, heel, and toe.

(*b*) Advertising, branding, labeling, or selling or offering for sale any product composed in whole or in part of rayon or composed in part of silk and other kinds of fiber or substances, unless full and nondeceptive disclosure of the fiber and other content of such product is made by clearly and nondeceptively designating and naming therein each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, and by giving the percentage of any fiber which is present in less than a substantial amount, or in any case less than 5 percent, as, for example, "Cotton and Rayon" when the product is composed of cotton at least equal to or greater than the proportion of rayon present. (Aug. 17, 1939.)

2518. **Glues, Etc.—Qualities.**—Russia Cement Co., a corporation, engaged in the business of manufacturing glues, pastes, and other adhesives, said products including a casein glue and a liquid cement, under

trade name "LePages'" 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 in commerce as set forth therein.

Russia Cement Co., in connection with the sale and distribution of its products, namely, liquid cement and casein glue, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use on labels affixed to the containers of either of said products or in its advertising or printed matter of whatever kind or character relating thereto of the word "waterproof" or of any other word or words of similar meaning as descriptive of said product which is not, in fact, waterproof; and from the use of the word "waterproof" in any way so as to import or imply that the product to which it refers is impervious to water or its effects, when such is not the fact. (Aug. 21, 1939.)

2519. **Bakery Products—Composition and "Certified."**—Columbia Baking Co., a corporation, engaged in manufacture, sale, and distribution of bakery products from some 15 branch establishments in Southern States which it operates, selling and distributing its products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Columbia Baking Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing directly, inferentially, by picturization or in any other way that the bread sold by it contains whole milk, or pure rich milk or cetrified milk, when such is not the fact.

(*b*) The use of the word "certified" as applied to its products in any manner the effect of which is to import or imply or cause the belief that the product which it offers for sale has been endorsed authoritatively or attested in writing by a qualified independent agency, board, or commission as to quality, qualifications, and fitness. unless and until such be the fact. Aug. 21, 1939.)

2520. **Lubricant—Manufacturer, Nature, Government Standard, and Qualities.**—Charles R. Lumley and James A. Nelson, copartners trading as Hi-Flex Products Co., engaged in the business of compounding a product intended for use as a lubricant for internal-combustion engines and in the sale and distribution thereof under the trade name "Hi-Flex" in interstate commerce, in competition with other partnerships and with individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the

alleged unfair methods of competition in commerce as set forth therein.

Charles R. Lumley and James A. Nelson, in connection with the offering for sale, sale, and distribution of the product "Hi-Flex" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in advertisements and advertising matter of whatever kind or character of the word "Manufacturers" or of any other word or words of similar meaning so as to import or imply, or the effect of which tends or may tend to convey the belief to purchasers that the said copartners make or manufacture the essential ingredients, including the graphite or so-called oildag, of which said product is composed, or that they actually own and operate or directly and absolutely control the plant or factory in which said ingredients are made or manufactured. Said copartners also agreed to cease and desist from the use of the word "liquid" as descriptive of the graphite which forms an ingredient of the product offered for sale and sold by them. Said copartners further agreed to cease and desist from stating or representing that the so-called "Derby" products referred to in said pamphlet have been set up as "Standard" by the United States Government, when such is not the fact. They also agreed to cease and desist from the use of the statement or representation that the prescribed or other use of said product will more than double the life of the moving parts of an automobile or of any other similar statement or representation which exaggerates or is in excess of the effectiveness which the use of said product has, over the use of plain oil, on the life of the moving parts of such automobile. (Aug. 21, 1939.)

2521. **Carbon Paper and Typewriter Ribbons—Free Products and Profit Sharing.**—Becker & Co., Inc., a corporation, engaged as a retailer in the business of selling, through salesmen and also by mail order, office supplies, including typewriter ribbons and carbon paper 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 in commerce as set forth therein.

Becker & Co., Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by said act, agreed to cease and desist from representing in its advertisements and advertising matter or through personal solicitations of its salesmen or otherwise:

(*a*) That the so-called premiums offered by it in connection with the purchase of its products, namely carbon paper and typewriter ribbons, are "free" or are given "without charge" or as a "reward" for the customer's business, when such is not the fact.

(*b*) That the plans used by the said corporation in the merchandising of its said products are "profit sharing" so as to import or imply that the customer, who purchases such products pursuant to said plans, shares in the profits made by the said corporation in the sale of its said products, or that the price of each so-called premium purportedly given to the customer represents a part of the profits realized by the said corporation in the sale of its carbon papers and typewriter ribbons, when such is not the fact. (Aug. 22, 1939.)

2522. **Church Furniture and Fixtures—Manufacturer and Prices.**—G. V. Redington and F. E. Redington, copartners trading as J. P. Redington & Co., engaged in the sale and distribution of church furniture and fixtures in interstate commerce, in competition with other partnerships and with individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

G. V. Redington and F. E. Redington, in connection with the offering for sale, sale, and distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in their advertisements and advertising matter of whatever kind or character or in any other way of each of the words "Manufacturers" and "Builders," or of any other word or words of a similar meaning as descriptive of the business conducted by them; and from the use of the said words, or either thereof, or of the phrase "Direct factory prices" so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said copartners make or manufacture the products advertised 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. Said copartners also agreed to cease and desist from the use of the word "factory" either alone or in connection with the word "direct" or with any other word or words as descriptive of the prices at which the said copartners sell their products, when in fact said prices are other than factory prices. (Aug. 22, 1939.)

2523. **Dry Goods—Business Status, Mills.**—Max Silver, an individual trading as Silver Mills, engaged in business of selling at wholesale dry goods in interstate commerce, in competition with other individuals, and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Max Silver agreed to cease and desist from the use of the word "Mills" as part of the trade name under which he offers for sale,

sells, or distributes his products in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "Mills" on his letterheads, invoice blanks, or in any way so as to import or imply, or the effect of which tends or may tend to convey, the belief to purchasers that he makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the mill, plant, or factory in which said products are made or manufactured, when such is not the fact. (Aug. 22, 1939.)

2524. **Cotton Drapery Fabrics—Nature of Manufacture.**—F. Schumacher & Co., a corporation, engaged in the business of selling under the trade name "Waverly Fabrics" certain cotton drapery fabrics in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

F. Schumacher & Co., in connection with the offering for sale, sale, and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the term "Shrinkproof" or "Shrunk" or of any other term, word or words of like effect or similar meaning in its advertising or on its labels or otherwise, the effect of which tends or may tend to convey the belief to purchasers that the products to which said term, word, or words apply are proof against shrinking or have been fully shrunk to the extent that no residual shrinkage is left remaining in such products, when such is not the fact. If the products have undergone the application of a shrinking process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, and the term "Shrunk" or other term or word of similar import is used as descriptive of said products, then in that case, such term or word so descriptively used shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly and unequivocally that there remains in said products a stated amount, percentage, or percentages of residual shrinkage in both the warp and the filling or in the warp or the filling, whichever has the greater residual shrinkage, as for example:

(*a*) Shrunk (or other word of similar import)—will not shrink more than —% under Commercial Standard, C. S. 59-36.

Shrunk (or other word of similar import)—residual shrinkage will not exceed —% under Commercial Standard, C. S. 59-36.

(*c*) Shrunk (or other word of similar import)—residual shrinkage will not exceed warp —%, filling —%, under Commercial Standard, C. S. 59-36.

(*d*) These goods have been shrunk (or preshrunk) to the extent that residual shrinkage will not exceed —%, when tested in accordance with the recognized and approved standards or tests. (Aug. 23, 1939.)

2525. **Electric Brooders—Composition, Qualities, and Tests.**—Cyclone Manufacturing Co., a corporation, engaged in the business of manufacturing electric brooders, poultry houses, and yard equipment and in the sale of said products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cyclone Manufacturing Co., in connection with the offering for sale, sale, and distribution of its electric brooders in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisments and advertising matter of whatever kind or character:

(*a*) Of the word "Chromized" or "Cromized" or of any other similar word or words as descriptive of the deflector or shield or other part of its said brooders, the effect of which tends or may tend to convey the belief to purchasers that the said part so described is composed of chromium, or is chromium plated, when such is not the fact.

(*b*) Of the statement or representation that there are no hot or cold spots under the brooder or that heat rays are evenly diffused to the floor of the entire brooder area or to every portion of the brooder.

(*c*) Of the statement or representation that the asbestos insulation used in the construction of said brooder is the best asbestos on the market, or that it has any beneficial insulating value.

(*d*) Of the statement "gives 42% more brooding area" or "provides more than one-third additional brooding area" or of any other similar statement in referring to the expansion hovers with which its brooder is equipped so as to import or imply that the represented increased brooding area within the brooder is feasibly available at all stages of the chick's development.

(*e*) Of any statement such as "the average current consumption, of No. 500 size is 3 to 4 kilowatts per 24 hours, while the No. 300 size will use on the average only 2 to 3 kilowatts" unless such statement also shall disclose the conditions as to time, place, and temperature, under which the designated amount of current is alleged to have been used in the operation of said device.

(*f*) Of any representation to the effect that said brooder has been tested by the Government, when such is not the fact.

(*g*) Of the statement that said brooder "rated first among eight popular make electric brooders," unless if such be the fact, the said statement shall disclose by whom and under what conditions, as to when and where, such tests were made. (Aug. 24, 1939.)

2526. **Ladies' Apparel and Men's Shirts—Composition.**—Ward-Stilson Co., a corporation, engaged in the manufacture of ladies' apparel and men's shirts and in sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ward-Stilson Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) Advertising, branding, labeling, or selling or offering for sale any product composed in whole or in part of rayon unless full and nondeceptive disclosure of the fiber and other content of such product be made by clearly and nondeceptively designating and naming therein each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, and giving the percentage of any fiber which is present in less than a substantial amount, or in any case less than 5 percent, as, for example, "rayon and wool" when the product is composed of rayon and wool throughout, the rayon content predominating, or "wool and rayon" when the amount of wool is at least equal to the amount of rayon present.

(*b*) The use of the word "crepe," "taffeta," "satin," "Shantung" or any other silk-connoting word in any way so as to import or imply that the fabric to which said words, or any thereof, refer are composed of silk, the product of the cocoon of the silkworm, when such is not the fact. If the word "crepe" or the word "taffeta" or the word "satin" or the word "Shantung" is used properly to describe the type of weave or construction of a rayon fabric, then in such case said word shall be immediately accompanied by the word "rayon," printed in type equally conspicuous, so as to indicate clearly that such product is in fact rayon; as, for example, "rayon crepe," "Rayon Taffeta," "Rayon Satin," "Rayon Shantung." (Aug. 25, 1939.)

2527. **Termite Eradicating Product—Scientific or Relevant Facts and Qualities.**—Harve D. Haggerty, an individual, formerly in capacity of a partner with one Paul J. Thomson, now deceased, and at present time as individual, engaged in business of manufacturing under the name "Termiteol Company" a product for use in the eradication of termites and as a protection of structures against the ravages of this particular insect, sold product under the trade designation "Termiteol" in interstate commerce, in competition with other individuals, and with partnerships, firms, and corporations likewise engaged, entered

into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harve D. Haggerty, in connection with the offering for sale, sale, and distribution of the product "Termiteol" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or character of statements or representations which directly assert or import or imply (*a*) that all new lumber is infested with termites; (*b*) that 98 percent of buildings have termites in them; (*c*) that a survey allegedly made by Termiteol Company of HOLC properties was in fact a "cross-section" inspection of all such properties; (*d*) that the average cost of treating a building for termites is comparable to the amount named in the aforesaid advertising relating to the so-called Federal Government projects; (*e*) that only the said "Termiteol Company" insures against termite deterioration or destruction and/or can supply effective termite treating work; (*f*) that the United States Bureau of Entomology is properly quoted as saying that New Orleans and its subtropical neighboring territory is dangerously infested with the most destructive type of termite. (Aug. 25, 1939.)

2528. **Laminated Wood Structures—History.**—Unit Structures, Inc., a corporation, engaged in the manufacture of glued laminated wood structures including arches and roof supports, and in the sale and distribution thereof in interstate commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Unit Structures, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from representing that it introduced laminated wood construction into this country in 1934, or at any other time; or impliedly or otherwise that Unit Structures, Inc., designed or originated the laminated arches or other construction of a designated building where such arches or construction were in fact made according to specifications prescribed by the owner. (Aug. 25, 1939.)

2529. **Concrete or Mortar Waterproofing Product—History and Branch Offices.**—Crystex of Florida, Inc., a corporation, engaged in the manufacture of a product designated "Crystex" intended for the waterproofing of concrete or mortar, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Crystex of Florida, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Representing directly or indirectly either by printed statements, picturizations or in any other manner that the product which it offers for sale has been used in construction of Boulder Dam or of any other specified structure, when such is not the fact.

(*b*) Representing that such corporation has branch offices or establishments in Los Angeles, Houston or any other place or locality, when such is not the fact.

(*c*) Representing that its product has had 10 years of proving, or testing in excess of the actual time thereof. (Sept. 1, 1939.)

2530. **Field Glasses and Binoculars—Composition.**—Trojan, Inc., a corporation, engaged in the business of selling field glasses and binoculars in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Trojan, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the word "Prism" or of any similar word, term or designation, as "Prisma," 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 products thus referred to have or contain prism erecting systems, when such is not the fact. (Sept. 2, 1939.)

2531. **Fans—Composition.**—Signal Manufacturing Co., a corporation, engaged in the business of manufacturing electrical appliances, including fans, in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Signal Manufacturing Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the word "rubber" or of any other rubber connoting word, either alone or in connection with the word "flexible," or in any way so as to import or imply that the blades of said product thus referred to are made wholly of rubber when such is not the fact. (Sept. 5, 1939.)

2532. **Kayaks, Rowboats, Etc.—Free Products, Value and Special or Limited Offers.**—T. E. Mead, an individual trading as Mead Gliders, engaged in the manufacture of small pleasure boats, such as canvas-covered kayaks and rowboats in both finished and "knocked-down"

form, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, and with other firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

T. E. Mead in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from representing

(*a*) That the paddle or the oars and rowlocks offered by him to the purchaser of a "Ki-Yak" or a boat is or are given free or without charge or as a gratuity to such purchaser or that the cost of such paddle or oars and rowlocks is not included, either in whole or in part, in the price asked for the product which must be purchased, when such is not the fact.

(*b*) That the paddle which accompanies the "Ki-Yak" is a $6 value or that said paddle is such as is customarily sold for $6 in the usual course of trade, when such is not the fact.

(*c*) That the offer of the paddle or of the oars and rowlocks is either a "special" or an "introductory" one or that it is an offer, the acceptance of which is limited as to time, when such is not the fact. (Sept. 6, 1939.)

2533. **Termite Exterminating Product—Qualities, Tests, History, Etc.**—Verne D. Benedict and Maurice S. Kuhn, copartners operating under the firm name of Cre-O-Tox Chemical Products Co., engaged in the sale and distribution of a chemical product known as "Cre-O-Tox A" intended for use in the treatment of timbers in buildings and structures which might be infested with subterranean termites, in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Verne D. Benedict and Maurice S. Kuhn in connection with the sale and distribution of their product in commerce, as defined by said Act, agreed to cease and desist from representing

(*a*) That by the use of "Cre-O-Tox A" or the "Tox-Eol" method, or any similar product or method, termites in the ground as well as those in the building are "exterminated" without qualification; or otherwise by words or expressions of similar import or meaning, that a complete extermination of termites may be expected under any and all conditions.

(*b*) That the chemicals used in such product are given the highest rating in the International Termite Exposure Tests of many years duration, when such is not the fact.

(*c*) Inferentially or otherwise that the product "Cre-O-Tox A" or the "Tox-Eol" method is the result of many years patient and time-taking experience on the part of the Cre-O-Tox Chemical Products Co., when such is not the fact.

(*d*) That the method sold by them is "not a temporary control method but complete extermination" or has "lasting results."

(*e*) That the property owner is completely protected by a "5 Year Warranty Bond" or by any "Bond" whatsoever unless and until such be the fact.

(*f*) That the oils used in the "Tox-Eol" system are of great penetrating power which carry the poisonous chemicals deep into the wood or in any other way that "deep" penetration is assured by either the properties contained in such product or the method used in its application. (Sept. 6, 1939.)

2534. **Peat Moss—Qualities, Indorsements or Approval and Competitive Product.**—Thomas W. Dunlop, an individual trading as Minnesota Horticultural Peat & Litter Co., engaged in the business of handling, as a jobber or wholesaler, garden peat moss produced in Minnesota, in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Thomas W. Dunlop, in connection with the sale and distribution of his product in commerce, as defined by said act, agreed to cease and desist from the use in his advertisements and advertising matter of statements or representations which directly assert or import or imply that the said product is of the same texture or analysis as that of peat moss produced in and imported from Germany, or that the said product has been officially approved or indorsed by the University of Minnesota or other State universities, or that the moisture-holding or water-retaining properties of German Peat Moss are destroyed as the result of the drying and packing under pressure to which such German Peat Moss is subjected, or that, because of its alleged higher content of nitrogenous material, said product has any more appreciable availability for growing plants than has the competitive imported German product, when such are not the facts. (Sept. 11, 1939.)

2535. **Pencils—"Direct to You," Size, Extent and Operations and Factory Connection.**—Herbert Hein, an individual trading as Seaboard Pencil Co., engaged as a jobber in the sale and distribution of pencils in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Herbert Hein, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Representing that the pencils sold by him are offered at regular factory prices, or that his customer buys direct from the factory, or, inferentially or otherwise, that such customer saves the middleman's profit by dealing with said Hein when such are not the facts;

(*b*) Representing that the pencils sold by him are made in the factory supplying the world's largest pencil users unless and until such statements shall have been established by adequate proof; or, by direct statement or by implication, that said Hein is in any way connected or associated with any pencil factory, when such is not the fact, or is other than a dealer in such products. (Sept. 12, 1939.)

2536. **Mattresses—Prices.**—Pacific Bedding Co., a corporation, engaged in the manufacture of mattresses and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Pacific Bedding Co., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from placing price marks on its mattresses which are higher than the prices for which such mattresses are sold or are intended to be sold to the purchasing public; or from using any other fictitious price mark-ups or representations expressed or implied with the effect of conveying or tending to convey to purchasers the belief or impression that such mattresses have a value or quality which they do not in fact possess. (Sept. 12, 1939.)

2537. **Typewriter Ribbons and Carbon Paper—Branch Offices.**—Fred W. Neely, an individual trading as Fred W. Neely Co., engaged in the sale and distribution of typewriter ribbons and carbon paper, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fred W. Neely, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from representing that he has branch offices or establishments in New York City, in Brooklyn or elsewhere unless and until such be the fact. (Sept. 13, 1939.)

2538. **Toys and Games—Source or Origin and Contents.**—J. Pressman & Co., Inc., a corporation, engaged in the manufacture and assembly of toys and games and in the sale of said products in

interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. Pressman & Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the statement "Made in U. S. A." or of any other like slogan on the containers of said assortments or in any other way so as to import or imply that said assortments are composed of American-made products, that is to say, that each and every item of which the assortment is composed is made in the United States of America, when such is not the fact. If the assortment is composed in part of an item or items actually made in the United States of America and of an item or items made elsewhere than the United States of America, and the slogan "Made in U. S. A." is used to designate such American-made item or items, then in which case, the slogan "Made in U. S. A." shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said assortment is not composed of items all of which are made in the United States of America. Said corporation also agrees to cease and desist from stating or representing on the containers of its pastry sets or in any other manner that said sets have or include a recipe book or booklet, when such is not the fact. (Sept. 14, 1939.)

2539. **Rupture Support or Truss—Qualities and Nature.**—Lewis D. Coburn, an individual trading as Faultless Appliance Sales Co., engaged in the sale by mail order and otherwise of a rupture support or truss, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lewis D. Coburn, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or character or in any other way of statements which directly assert or clearly import or imply that difficulties associated with rupture will be permanently cured or ended by the use of said device or that said device, when used, will afford adequate support for all varieties and grades of hernia or that the use of said device will do more than to give temporary support for certain varieties of hernia or prevent temporarily the protrusion of the viscera through the opening or fault in the wall of the body cavity. Said individual also agrees to cease and desist from the use in his advertising or otherwise of any statement or representation, the

effect of which tends or may tend to convey the belief to purchasers that the device offered for sale and sold by him has neither a steel bar nor band or a pad, when in fact it is equipped with either or both of such elements. (Sept. 14, 1939.)

2540. **Laxative Tablet—Price and Manufacturer.**—Juvenex, Inc., a corporation, and Charles H. Whitsey, an individual, engaged as distributors in the sale of a laxative tablet known as "Juvenex," in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Juvenex, Inc., and Charles H. Whitsey, in connection with the sale and distribution of its or his products in commerce, as defined by said act, agreed to cease and desist:

(*a*) From the use, on labels or in printed or advertising matter of whatever kind employed in connection with the offering for sale, sale and distribution of its or his products in commerce, of any false, fictitious or exaggerated price, that is to say, a price which is in excess of the price at which said products are sold or intended to be sold in the usual course of trade.

(*b*) From the use in printed or advertising matter or in any other way of the word "manufacturer" or of any other similar word, term or designation, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said corporation or the said individual makes or manufactures the products sold by it or him or that it or he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Sept. 7, 1939.)

2541. **Shirts, Slacks, and Knitted Wear—Composition, "Mills" and Manufacturer.**—Lester G. Griffith, an individual trading as Beverly Knitting Mills, engaged under said trade name in the sale of shirts, slacks, and knitted wear in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lester G. Griffith, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from the use on his labels, invoices, or in his printed or advertising matter 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, and from the use of the said word "silk" in any way so as to import or imply that products to which said word refers are composed of silk, when such is not the

fact. If the products are composed of silk in substantial part and in part of fabric material other than silk, and the word "silk" is used to refer to the silk content of said products, the word "silk" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are not composed wholly of silk. Said individual also agrees to cease and desist from the use of the words "Knitting Mills" as part of the trade name used by him in connection with the sale of his products in interstate commerce, or of the word "manufacturers" or of any other word or words of similar meaning so as to import or imply the belief to purchaser that the said individual makes or manufactures said products or that he actually owns and operates or directly and absolutely controls the mills or factory in which said products are made or manufactured, when such is not the fact. (Sept. 18, 1939.)

2542. **Cuban Honey—Qualities.**—Merit Food Co., Inc., a corporation, engaged in the packing of a number of food products, including a Cuban Honey, and in the sale thereof in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Merit Food Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use in its advertising matter of whatever kind or character disseminated in commerce of statements or representations which, directly or by inference, convey, tend or may tend to convey the belief to purchasers or prospective purchasers that the said product is a tonic or that it has, or is credited by the medical profession or leading physicians with having, curative qualities or properties in the treatment of stomach ailments, inflammation of the intestines, asthma, bronchitis, sinus infections, or irritations of the throat and bronchial tract, or that it will do more than to afford temporary relief from irritations, such as result from a cough or cold, or that it has value other than that of a bland food in the treatment of digestive disorders. (Sept. 15, 1939.)

2543. **Brief Cases, Etc.—Composition.**—Jacob Hyman and Jacob Zichlinsky are copartners, trading under the firm name and style "Hercules Leather Goods Company," engaged in the sale and distribution of brief cases and other products in interstate commerce, in competition with other partnerships and with corporations, individuals and firms likewise, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jacob Hyman and Jacob Zichlinsky, in connection with the offering for sale, sale and distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they will cease and desist from the use of the term or coined word "Hercuhyde" as a trade name, stamp, brand, or label for such of said products as are not made from leather or hide; and from the use of the word "hyde" or of any other simulation of the word "hide," either alone or in connection or conjunction with the letters "hercu" or with any word or words or in any other way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the product referred to is composed of leather or hide, the skin of a large animal as an ox, when such is not the fact. (Sept. 25, 1939.)

2544. **Bird Food—Free Products, Quantity, Source or Origin and Composition.**—Magnesia Products Co., a corporation, engaged in the packing of bird food and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Magnesia Products Co., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing:

(*a*) That articles supplied in its packages of bird food are "free," when such articles are, in fact, not free but the cost thereof is included in the price of the complete package.

(*b*) That the packages contain one pound net weight of bird seed when such bird seed content is less than 1 pound.

(*c*) That the contents of a package are "Imported Bird Food" when any portion thereof is domestic seed.

(*d*) That its grit cube contains all mineral and other elements necessary for bird health, or that such may be obtained only in the grit cube offered for sale by said company, when such are not the facts. (Sept. 25, 1939.)

2545. **Cleaning Compounds—Qualities and Results.**—Louis Ross, sole trader as Perfect Cleaning Fluid Co., engaged in the making of cleaning compounds including a spot cleanser under trade designation "Perfect Cleaning Fluid" and a grease and oil detergent under trade designation "Roson," and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Louis Ross, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use on his labels or otherwise of statements and representations to the effect that his "Perfect Cleaning Fluid" is "invaluable for the removal of stains" from fabric or "has no injurious effect on the most delicate material"; or of any other statements or representations of similar import or meaning which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said product will remove stains of whatever kind or character from fabrics or materials to which it is applied; or otherwise that the colors of fabrics or materials dyed, with nonfast or fugitive dyes will not be impaired, harmed or injured by application or use thereof to or on such fabrics or materials—when such are not the facts.

(*b*) The use of the words "Leaves No Rings" or words or expressions of similar meaning so as to import or imply or which may have the capacity or tendency to mislead and deceive purchasers into the belief that said product will not leave a ring when applied to a spot or spots on certain fabrics or materials, when such is not the fact.

(*c*) Representing that "Roson" solution gets into the very heart of the concrete and "pulls" the precipitate to the surface or dries before you can say "Jack Robinson" or leaves a stubborn protective film superior to that left by similar products; or removes all stubborn stains from tablecloths, dresses, etc.—When such are not the facts.

(*d*) That the more stubborn the stain the more active is Roson's alkali action; or that garage owners from "Dan to Barseeba," or of any other extended area, thus implied, have so discovered. (Sept. 26, 1939.)

2546. **Casein Glues—Qualities.**—National Casein Co., a corporation, engaged in the manufacture or production of various glues, including casein glues, in interstate commerce, in competition with other corporations and with partnerships, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

National Casein Co., in connection with the sale and distribution of casein glues in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in printed and advertising matter or otherwise of the word "waterproof" or of any other word or words of similar meaning as descriptive of casein glue which is not, in fact, waterproof, and from the use of the said word in any way so as to import or imply that said

product is impervious to water or its effects, when such is not the fact. (Sept. 21, 1939.)

2547. **Electric Shaver—Valuable Certificate, Special or Limited Offers, Prices, Nature, Source or Origin and Guarantee.**—T. V. McCormick, an individual trading as Gruen Instrument Co., engaged in the sale and distribution of a cheap electric shaver, in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

T. V. McCormick, in connection with the sale and distribution of his product in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Issuing or disseminating a so-called certificate or other instrument purporting to be worth $7.00 or any other amount in excess of its actual bona fide value.

(*b*) Representing that his offer is a "Xmas Sale" or "for a limited time only" or is a "one time super-value"; or that all other forms of expensive advertising have been "eliminated"—when such are not the facts.

(*c*) Representing the regular price of his "Shave King" or similar instrument to be $10.00 or any amount in excess of the $3.00 or other price for which he has always sold it.

(*d*) Representing that it is positively the only electric razor in America that combines certain features named, when such is not the fact.

(*e*) Representing that said instrument is a "sensational shaving innovation" or is worthy of the name "Gruen" or was "Crafted" by Gruen Instrument Co.

(*f*) Representing that such instrument is "Guaranteed" or designating, describing or referring to any agreement as a "Guarantee" which requires the payment of money or other consideration by the owner in order to have such instrument repaired or replaced. (Sept. 21, 1939.)

2548. **Tuna Fish—Source or Origin.**—Southern California Fish Corp., a corporation, engaged in the business of processing and packing sea food, including tuna fish, and in sale thereof in interstate commerce, in competition with other corporations, and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Southern California Fish Corp., in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to

cease and desist from the use on its labels or otherwise to advertise said products of the words "Italia Tonno" or the word "Tonno" in connection or conjunction with any other Italian word or words, pictorial representation, insignia, or otherwise, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or the ultimate consumer that said products are products from the coasts of Italy and/or where packed in and imported from Italy, when such is not the fact. (Sept. 27, 1939.)

2549. **Quilts and Other Articles of Bedding—Prices, Special, Limited or Introductory Offers and Factories.**—Leo F. Sines and A. Mary Sines, copartners, operating under firm name of Sunnie May Quilt Co., engaged in the sale and distribution of quilts and other articles of bedding in interstate commerce in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Leo F. Sines and A. Mary Sines, in connection with their sale and distribution of quilts and other articles in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of any fictitious figures as purporting to be the regular sales prices of their merchandise or the representation that a price offered is a special sales price, when such is not the fact.

(*b*) Representing that their regular prices are in any way special, limited, or introductory; or that the purchaser will save money by ordering within 5 days or any other specified time, or will save half the cost of his bedding or any thereof—when such are not the facts.

(*c*) Representing that they own, operate, or control factories or make the products sold by them or any other products, when such is not the fact. (Sept. 28, 1939.)

2550. **Electric Shavers—Prices, Qualities, Guarantee, Free Product, Earnings or Profits, and Lottery Schemes and Devices.**—Bernard Cohen, sole trader, operating under the assumed names of Plymouth Electric Dry Shaver and Plymouth Electric Supply Co., engaged in a mail-order business of selling and distributing cheap electric dry shavers in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bernard Cohen, in connection with his sale and distribution of electric shavers in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing that the instrument sold by him is a $15 electric shaver or is a regular $15 value or is of any value whatsoever in excess

of the price for which the same or similar instruments may be available in the retail market in the usual course of business.

(*b*) Representing that it has any of the merits of or is in any way comparable to the high-grade or first-class electric shavers on the market; or that this shaver is a health item, or contains startling new developments, or assures a smooth, clean shave or an effective vigorous massage, or gives the same performance as appliances selling at many times its price; or that such instrument has either efficiency, economy, convenience, or durability.

(*c*) Representing that said instrument is "fully guaranteed"; or use of the words "guarantee" or "guaranteed" unless whenever used clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security.

(*d*) Representing that a cigarette lighter actually worth 8½ cents is sold separately for 45 cents, when such is not the fact; or representing that any article is given "free" or without cost when the receipt thereof is contingent upon any consideration, terms, or condition, as payment of money, purchase of other articles, or rendering of services not clearly and unequivocally disclosed, in direct connection with the making of such representation.

(*e*) Representing that fortunes, huge profits, or any other exaggerated or unusual earnings may be expected or anticipated by sales persons or distributors of his merchandise; or directly or indirectly promising any returns in excess of the average earnings and profits that have actually been achieved by his dealers under normal conditions in the due course of business.

(*f*) 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 any merchandise by the use thereof.

(*g*) Mailing, shipping, or transporting to agents or to distributors or 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 any merchandise by the use thereof.

(*h*) Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices. (Oct. 2, 1939.)

2551. **Key Ring Cases—Composition.**—Maurice Birnbaum, an individual, trading as Birnbaum Co., engaged in the business of manufacturing products, including key ring cases, and in sale thereof in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Maurice Birnbaum, in connection with the offering for sale, sale, and distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "leather" or of any other leather connoting word on his products or in his printed matter or otherwise as descriptive of products which are not made from leather, or the use of which word imports or implies or tends or may tend to convey the belief to purchasers that the products to which said word refers are composed of leather, when such is not the fact. If the products are made in substantial part of leather, and in part of material other than leather, and the word "leather" is used to describe such leather content, then in which case, the word "leather" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are not composed wholly of leather or that said products are composed in part of material other than leather. (Oct. 2, 1939.)

2552. **Men's Hose—Composition.**—Silver Knit Hosiery Mills, Inc., a corporation, engaged in the manufacture of men's hose and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Silver Knit Hosiery Mills, Inc., in connection with the offering for sale, sale, and distribution of its hose in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "silk" either alone or together with any other word or words or in any other way as a mark, stamp, brand, or label for, or otherwise, to represent hose which is not composed of silk, the product of the cocoon of the silk worm. Said corporation also agreed to cease and desist from the use of the words "silk and rayon" or "rayon and silk" as descriptive of hose which is not composed of the two fibers. If the body or leg of the hose is composed of silk or of silk and rayon or rayon and silk, with the top, heel, toe, and sole of the hose composed of a fiber or fibers other than that or those named, and the word "silk" or the words "silk and rayon" or "rayon and silk" is or are used to properly describe such body or leg, then in that case, the word "silk" or the words "silk and rayon" or "rayon and silk" shall be prominently accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said hose is not composed wholly of silk or of silk and rayon or rayon and silk, as the case may be, but is composed in part of a fiber or fibers other than silk or other than silk and rayon or rayon and silk. If said hose or a portion thereof is composed of

silk and rayon, and the said fiber names are used to describe said hose or portion thereof, then in that case the names of the fibers shall be arranged in the order of their predominance. Said corporation also agrees to cease and desist from the use of the word "linen" either alone or in connection or conjunction with the words "Pure Irish" or either thereof, or with any other word or words as descriptive of hose, or any portion thereof, which is not composed of linen. (Oct. 11, 1939.)

2553. **Preparations for Hair, Skin, and Nails—Qualities and Ailments.**—Harper Method, Inc., a corporation, engaged in the manufacture of a line of products for use on the hair, skin, and nails under the trade designation "Harper Method Preparations" including a hair tonique, ointments for the hair and scalp, and a pomade for eyelashes and eyebrows, and in sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harper Method, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from representing either by direct statement or by reasonable inference:

(*a*) That the use of the 'Harper Method Tonique" or any of the several "Harper Method Ointments" or the Harper methods of application, or any similar preparation or treatment will or can prevent baldness, end dandruff, restore scalp health; cause, stimulate or encourage growth of new hair; grow new hair to normal texture and color; bring renewed vitality and health to the hair; or allay "scalp fever";

(*b*) That any such or similar preparations or their application will or can normalize or regulate the oil glands of the hair or in any way affect the functioning thereof;

(*c*) That colds make one's hair a social outcast, or cause it to become dull and limp, or to come out, or to develop broken ends;

(*d*) That dried oils, dust, or grime are often the causes of falling hair or baldness; or that removal of such foreign matter by the use of Harper method or similar preparations will effectively prevent or remedy falling hair or baldness;

(*e*) By designations such as "Eyelash and Eyebrow Grower," or by direct statement, implication, or the use of words of similar import or meaning, that the pomade offered by said corporation will grow lashes or brows, or promote their growth or make them longer or silky. (Oct. 12, 1939.)

2554. **Hosiery—Mills or Factory.**—Henry J. Berusch, an individual, engaged in conduct of business under trade name "Hoburt Hosiery Mills" consisting of sale and distribution of products in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Henry J. Berusch agreed to cease and desist from the use of the word "Mills" as part of the trade name used by him in connection with the offering for sale, sale, or distribution of products in commerce, as commerce is defined by the Federal Trade Commission Act, and from the use of the word "Mills" in his trade name or in any other way so as to import or imply or the effect of which tends or may tend to convey the belief to customers or prospective customers that the said Henry J. Berusch makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the mill or factory in which said products are made, when such is not the fact. (Oct. 17, 1939.)

2555. **Literature on Character Analyses, Personal Development, Etc.—Scientific or Relevant Facts, Qualities, Free Gift, and Man Conducting Business.**—L. Thomson, sole trader as Thomson-Heywood Co., engaged in publication, sale, and distribution in interstate commerce of printed literature dealing with character analyses, personal readings, and personal development, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. Thomson, in connection with the sale and distribution of her course in personal development and personal readings and character analyses in commerce as defined in said act, agreed to cease and desist from representing:

(*a*) That the reading of one's "Earth Sign" is the only way to obtain authentic or convincing information regarding oneself of his future outlook.

(*b*) That her personal readings or character analyses are "full," "scientific," "thorough" or "astropsychological"; or bring "Psychological and occult influences" to bear upon the subject's case;

(*c*) That anything is given "as a free gift" or as a gratuity when the cost thereof is included in the total price charged for a combination offer;

(*d*) That any person without regard to environment, background, age, or circumstance, will, can, or may, by following the instructions sold and offered for sale:

1. Understand the laws underlying all physical and spiritual life.
2. Conquer adverse conditions.
3. Realize his hopes.
4. Do whatever he wishes to do.
5. Attain any reasonable ambition.
6. Get the material things he wishes to possess.
7. Be master of himself, his circumstances, and his destiny.
8. Command a thousand times the power of the average person.
9. Rise head and shoulders above the multitude.
10. Be carried to whatever object of desire he may have.
11. Rapidly develop executive capacity, inventiveness, etc.
12. Bring business right out of the air.
13. Command all the talent, thought, and cooperation in the world necessary for achieving his purpose.
14. Build wealth, health, power, and capacity to almost any degree desired.
15. Become a wizard in some particular line.
16. Remove whatever is detrimental to his health, happiness, and prosperity.
17. Achieve success in economic affairs.
18. Command physical efficiency.
19. Induce cooperation of many people and groups on a large scale.
20. Attain anything possible to a human being.
21. Triumphantly succeed in getting what he is after.
22. Acquire omniscience.
23. Change the business world by habit fixations, control of environment, and suggestion.
24. Gain his end by simply forming an idea of a definite objective.
25. Solve his problems by automatic flashes of inspiration.
26. Go any distance and overcome any obstacles by merely creating the desire.
27. Instinctively act in the right way as opportunities arise.
28. Attain success with as absolute certainty as the laws of electricity and mechanics.
29. Find that nothing is insuperable.
30. Avoid, be free from, or cure all functional disease.
31. Materially effect recovery from organic diseases by the play of the mind.
32. Be well and free from any ailment.
33. Cure physical disorders by merely refusing to think of them, by imagining a healthy condition, by commanding one's self to be well.

(*e*) Either directly or by reasonable implication, that she is a man, or that her business is conducted by a man, when such is not the fact. (Oct. 18, 1939.)

2556. **Neckties—Composition, Manufacturer and Value.**—Max Habernickel, Jr., and John A. Anderson, copartners trading under name "Haband Company" engaged in sale and distribution of men's neckties in interstate commerce in competition with other partnerships and with corporations, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Max Habernickel, Jr., and John A. Anderson, in connection with the offering for sale, sale and distribution of their neckties in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on their labels or in any other way of statements which directly assert or the effect of which tends or may tend to convey the belief to purchasers that the interlinings of said neckties are composed of 100% wool, and from the use of the term "100% wool" or the word "wool" either alone or in connection with any other word or words or in any other way so as to import or imply that the interlinings of said neckties are composed wholly of wool, when such is not the fact. If the interlining is composed in substantial part of wool and in part of other material, and the word "wool" is used to refer to such wool content, then in that case, the word "wool" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said interlining is not composed wholly of wool or that it is composed in part of material other than wool. Said copartners also agree to cease and desist from statements or representations, the effect of which conveys or may tend to convey the belief to purchasers that the necktie interlinings are composed of wool in such substantial quantity as to insure longer wear and better tying qualities, when such is not the fact. Said copartners also agreed to cease and desist from the use of the words "All Silk" as descriptive of neckties offered for sale and sold by them in interstate commerce, when in fact said neckties are not composed wholly of silk, and from the use of the word "Silk" either alone or in connection or conjunction with any other word or words or in any other way so as to import or imply that the products to which said word or words refer are all silk, when such is not the fact. If the products are composed in substantial part of silk and in part of other materials, and the word "silk" is used to describe such silk content, then in which case, the word "silk" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are not composed wholly of silk or that they are composed in part of material or materials other than silk. If the products are composed in whole or in part of rayon, such fact

shall be made clearly and unequivocally to appear in the labeling and invoicing and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or printed. Said copartners, in soliciting the sale of and selling their products in interstate commerce, also agreed to cease and desist from the use in their printed or advertising matter, on their labels or otherwise, of the statement "for years we have been making this one tie" when in fact, said copartners do not make the tie referred to and from the use of the said statement or of any other statement of similar import, the effect of which tends or may tend to convey the belief to purchasers that the said copartners own and operate or directly and absolutely control the plant or factory in which said product is made or manufactured, when such is not the fact. Said copartners also agreed to cease and desist from stating or representing in their printed or advertising matter or otherwise that the ties sold by them for 39 cents are worth 78 cents or any other amount which is in excess of that for which such ties are obtainable in the usual course of competitive trade. (Oct. 20, 1939.)

2557. **Neckties—Composition and Qualities.**—Clermont Cravat Co., Inc., a corporation, engaged in the business of manufacturing men's neckties, and in sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Clermont Cravat Co., Inc., in connection with the offering for sale, sale and distribution of its neckties in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on labels affixed to said products or in any other way of statements or representations which directly assert or the effect of which tends or may tend to convey the belief to purchasers that the interlinings of said ties are composed of 100 percent wool, and from the use of the term "100 percent wool" or the word "wool" either alone or in connection or conjunction with any other word or words or in any other way so as to import or imply that the interlinings of said ties are composed wholly of wool, when such is not the fact. If the interlining is composed in substantial part of wool and in part of other material, and the word "wool" is used to refer to such wool content, then in that case, the word "wool" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said interlining is not composed wholly of wool or that it is composed in part of material other than wool. Said corporation also agrees to cease and desist from statements or representations, the effect of which conveys or may tend to convey the

belief to purchasers that the necktie interlinings are composed of wool in such substantial quantity as to insure longer wear and better tying qualities, when such is not the fact. Said corporation also agreed to cease and desist from the use of the words "All Silk" as descriptive of ties offered for sale and sold by it in interstate commerce, when in fact said neckties are not composed wholly of silk, and from the use of the word "silk" either alone or in connection or conjunction with any other word or words or in any other way so as to import or imply that the products to which said word or words refer are all silk, when such is not the fact. If the products are composed in substantial part of silk and in part of other materials, and the word "silk" is used to describe such silk content, then in which case, the word "silk" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are not composed wholly of silk or that they are composed in part of material or materials other than silk. If the products are composed in whole or in part of rayon, such fact shall be made clearly and unequivocally to appear in the labeling and invoicing and in all advertising matter, sales promotional descriptions, or representations thereof however disseminated or printed. (Oct. 20, 1939.)

2558. **Toy Assortments—Source or Origin.**—Gropper Manufacturing Co., Inc., a corporation, engaged in the manufacture and assembly of toys and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gropper Manufacturing Co., Inc., in connection with the offering for sale, sale and distribution of its toy assortments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the slogan "Made in U. S. A." on the containers of said assortments or in any other way so as to import or imply that said assortments are composed of American-made products, that is to say, that each and every item of which the assortment is composed is made in the United States of America, when such is not the fact. If the assortment is composed, in part, of an item, or items, actually made in the United States of America and of an item or items made elsewhere than the United States of America, and the slogan "Made in U. S. A." is used to designate such American-made item or items, then in that case, the slogan "Made in U. S. A." shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said assortment is not composed of items all of which are made in the United States of America. (Oct. 25, 1939.)

2559. **Automotive Mufflers, Exhaust and Tail Pipes—Manufacturer.**—AP Parts Corporation, a corporation, engaged in the sale and distribution of automotive mufflers, exhaust and tail pipes, in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

AP Parts Corporation, in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on its stationery or in its advertising or printed matter of whatever kind or character of the word "Manufacturers" as descriptive of the business conducted by the said corporation; and from the use of the word "manufacturers" or of any other word or words of similar import, or of any statement, pictorial or other representation, the effect of which tends or may tend to convey the belief to purchasers or others that the said corporation makes or manufactures the products which it offers for sale or sells, or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Oct. 25, 1939.)

2560. **Lantern to Kill Insects—Qualities, Patented, Certified and Earnings.**—Joseph Zweigenthal and William A. Safrin, copartners trading as American Inventions Co., engaged in the business of selling a type of lantern allegedly designed to electrocute mosquitoes and other insects and which device was sold by the said copartners under the several names "Elec-Ray Insect Killer," "Elec-Ray Insect Destroyer" and "Mosquito Elec-Ray Lantern," in interstate commerce in competition with other partnerships and with corporations, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Zweigenthal and William A. Safrin, in connection with the offering for sale, sale and distribution of their lanterns in commerce, as commerce is defined by the Federal Trade Commission Act, agreed and each of them agreed to cease and desist from the use in their advertisements and advertising matter of whatever kind or character, or as part of or in connection with the trade name or trade names for said products, or otherwise, of any word, statement or representation, the effect of which conveys, tends or may tend to convey the belief to purchasers or prospective purchasers that insects which contact said device will be instantly killed or destroyed, or that the light furnished by said device will attract mosquitoes and other flying insects to it in sufficient numbers to make said device of distinct value in the control of such insects, or that mosquitoes and other flying insects which may be at-

tracted by the light will all be electrocuted upon contacting the electrically charged wires surrounding the device, or that the possible destruction of such pests which may be attracted by the light is due to electrocution resulting from their contacting the charged wires surrounding the lantern. Said copartners also agreed to cease and desist from the use of any statement or representation which directly asserts or imports or implies that said device is or has been patented or that it has received the certification of the National Board of Fire Underwriters or Underwriters Laboratories, or that sellers of said devices will have no competition or that there is nothing else like it on the market, or that the salesman of said devices will earn or make $1,000 during a summer, when such are not the facts. (Oct. 26, 1939.)

2561. **Printed Stationery—Nature of Manufacture.**—William Lerner, individual, trading as Sierra Press engaged in business of printing, specializing in wedding invitations and other similar matter, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

William Lerner, in connection with the offering for sale, sale and distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in his advertising matter and advertisements of whatever kind or character of the words "Process Engraved" or the word "Engraved" or of any other word or words of similar meaning or implication, either alone or in connection or conjunction with any other word or words or in any way, the effect of which tends or may tend to convey the belief to purchasers that the products to which said word or words refer are made from inked engraved plates by a process known to the trade and the purchasing public as "Engraving," when such is not the fact. (Oct. 20, 1939.)

2562. **Linen Products—Composition.**—Leacock & Co., Inc., a corporation, engaged in the manufacture and importation of quality and decorative linens and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Leacock & Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Linex" either independently or in connection or conjunction with any other word or words, in trade indicia, advertisements or otherwise, to designate or describe products not made of the fiber of flax; and from the use of the word "Linex" in

any way which may have the tendency or effect to confuse, mislead or deceive purchasers into the belief that the products so described are made of fiber of flax, when such is not the fact.

(*b*) Advertising, branding, labeling, selling, or offering for sale any product composed in whole or in part of rayon unless full and nondeceptive disclosure of the fiber and other content of such product is made by clearly and nondeceptively designating and naming therein each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, and by giving the percentage of any fiber which is present in less than a substantial amount, or in any case less than 5 percent; as, for example, "Ramie and Rayon" when the product is composed of ramie and rayon throughout, with the amount of ramie at least equal to or greater than the proportion of rayon present. (Oct. 27, 1939.)

2563. **"Renu-Ink" for Typewriter Ribbons—Qualities and Guarantee.**—Roger Williams, sole trader as Renu-Ink Manufacturing Co., engaged in sale and distribution in interstate commerce of product designated "Renu-Ink" for treating typewriter ribbons, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Roger Williams, in connection with the sale and distribution of his product in commerce as defined by said act, agreed to cease and desist from representing:

(*a*) That Renu-Ink makes typewriter ribbons like new, or as good as new, or practically as good as new, either instantly, in less than 1 minute, or at all; or that renewed ribbons will last as long as new ones.

(*b*) That Renu-Ink is "unconditionally guaranteed", when such is not the fact. If the words "guarantee" or "guaranteed" or any words of similar meaning are used in connection with the advertising, sale or offering for sale of his products, clear and unequivocal disclosure shall be made, whenever so used and in direct connection therewith, of exactly what is offered by way of security, as for example, refund of purchase price. (Oct. 27, 1939.)

2564. **Wall Covering—Nature.**—Tylac Co., a corporation, engaged in the business of manufacturing a composition material known as "Tylac" intended for use as a wall covering, and in sale and distribution of said product in interstate commerce, in competition with other corporations, and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Tylac Co., in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements and advertising matter, on its stationery, or in any other way, of the term "tile" either alone or in connection or conjunction with the trade name "Tylac" or with any other word or words, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that said products are tile, as that term is generally understood to mean in the trade and by the purchasing public, unless in immediate connection with the word "Tile," wherever used, there shall appear in equally conspicuous type a word or words designating the material or substance of which said products are made or which shall indicate clearly that said products are other than ceramics. (Oct. 30, 1939.)

2565. **Men's and Boys' Suits—Source or Origin.**—Levy Bros. & Adler Rochester, Inc., a corporation, engaged in the manufacture of men's and boys' suits and in the sale and distribution thereof in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Levy Bros. & Adler-Rochester, Inc., in connection with the offering for sale, sale and distribution of its domestically made suit products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of or from furnishing others for their use labels or advertising matter bearing the words "Olde English," and which labels or advertising matter are or is to be employed on or in connection with said domestically made suit products. Said corporation also agreed to cease and desist from the use of the word "English," printed in English script or otherwise, either alone or in connection with the word "Olde" or with any other word or words, picturization, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the products referred to by said word or words are made in England or are made from fabrics of English manufacture, when such is not the fact. (Nov. 1, 1939.)

2566. **Quilts—Special, Introductory or Limited Offer, Competitive Products and Qualities.**—J. L. Bashor, an individual trading as Mother Goose Bedding Co., engaged in the business of manufacturing goose feather quilts and in the sale and distribution thereof in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the fol-

lowing agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. L. Bashore agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or character disseminated in interstate commerce of the words "Special Introductory" or of either of said words alone or in connection with the words "One Week Only" or with any other word or words or in any other way as descriptive of the offer made or tendered by him in connection with the offering for sale, sale and distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, so as to import or imply or the effect of which tends or may tend to convey the belief to customers or prospective customers that said offer is a special or introductory one or is other than the regular offer made by the said individual in the usual course of trade and/or that it is an offer, the acceptance of which is limited to one week or other specified time only, when such is not the fact. Said individual also agreed to cease and desist from stating or representing in his said advertising (*a*) that the bedding usually found in modern homes is made of fabrics that absorb moisture and will conduct heat away from the body, while at the same time they conduct cold from the outside; (*b*) that ordinary bed covers, as quilts or blankets, will absorb body heat and thus cause the heart action to speed up by burning more carbon to replace the heat of which the body has been deprived; (*c*) that the use of down or feather quilts or comforts will cause an individual to wake up more refreshed than he would had he used an ordinary quilt; (*d*) that the use of down or feather quilts is an effective treatment or preventative for sinus, arthritis, rheumatism, nasal and catarrhal conditions and/or that the represented freedom of persons living in Germany, Switzerland, Poland, Austria, England, and France from such ailments is due to the alleged practically universal use by such persons of feather-filled bed quilting. (Nov. 1, 1939.)

2567. **Bronze Powders—Manufacturer and Importer.**—L. Hemmerdinger & Co., Inc., a corporation, engaged in the sale and distribution of bronze powders, paints, varnishes, and other products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. Hemmerdinger & Co., Inc., agreed to cease and desist from the use of the word "Manufacturers" on its letterheads employed by it in connection with the offering for sale, sale or distribution of its powder product in interstate commerce, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that it makes or manufactures said products or that it actually

owns and operates or directly and absolutely controls the plant or factory in which said products are made. Said corporation also agreed to cease and desist from the use on its stationery of the word "Importers" so as to import or imply that it is presently engaged as an importer of said powder product, when such is not the fact. (Nov. 3, 1939.)

2568. **Fountain Pens—Unique Nature.**—Jacob Harris and Emanuel Harris, copartners, operating under the firm name of J. Harris & Co. and also as Majestic Pen Co., engaged in the manufacturing and assembling cheap fountain pens and pencils and in the sale and distribution thereof in interstate commerce, in competition with other firms, and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jacob Harris and Emanuel Harris, in connection with the sale and distribution of their products in commerce as defined by said act, ageed to cease and desist from representing or placing in the hands of others the means of representing that any fountain pen manufactured, assembled or sold by them holds 109 percent more ink than other pens, or any amount or proportion thereof whatsoever in excess of the actual quantity or true proportion as compared to other fountain pens on the market. (Nov. 4, 1939.)

2569. **Upholstery Fabrics—Weaver or Manufacturer and Government Standards Conformance.**—Gerson Greenberg, an individual, trading as "Duratex Plush Company," engaged in business of selling and distributing mohair upholstery fabrics known as "Dorise" in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gerson Greenberg agreed to cease and desist from the use of the word "Weavers" as part of the trade name under which he solicits the sale of or sells in interstate commerce products which are not woven by him, and from the use of the said word "Weavers" or of any other word of similar meaning or of the illustration of weaving machinery or of the said word in connection with any such illustration so as to import or imply the effect of which tends or may tend to convey the belief to customers or prospective customers that the said Gerson Greenberg weaves the product sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are woven. The said Gerson Greenberg also agreed to cease and desist from stating or representing in his printed matter or otherwise in connection with the sale and distribution of his products in interstate commerce that said

products are "A Government Standard" or that they are "Made to Comply with Government Specifications," when in fact there is no proper basis for such claims. (Nov. 4, 1939.)

2570. **Chickens and Poultry Raising Equipment—Competitive Products.**—Milton H. Arndt, sole trader as M. H. Arndt Manufacturing Co., engaged in the breeding and developing of chickens and in the manufacture, sale and distribution in interstate commerce of poultry raising equipment and breeding batteries, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Commercial chicken brooders employ either contact heat or radiant heat. The former are those having the heat element arranged so that flannel or other cloth is heated, to which the chicks present their backs for warmth. This element hangs over the floor and can be raised or lowered to adjust for height of the chicks. Radiant heat is obtained by suspending the heating element over the chicks. They are warmed by the radiation therefrom through the air and in consequence the elements must be hotter than where the chicks contact the heated material. There is a hump-backed condition found in poultry but in the opinion of the Bureau of Animal Industry, United States Department of Agriculture, this is considered to be a hereditary condition controlled by breeding practices, and not the effect of the type of heating used in a brooder.

Milton H. Arndt, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from:

(*a*) Asserting or representing in any way that contact heat makes hump-backed broilers or chicks if used continuously or otherwise; or by the use of words or expressions of similar import, representing either directly or by reasonable inference that chicks brooded by contact heat are in any way inferior to those brooded by means of radiant heat or otherwise.

(*b*) Publishing or exhibiting drawings or other pictorial representations of competitive products, the effect of which tends or may tend falsely to represent the effectiveness, desirability or other quality of such competitive product.

(*c*) Making false or disparaging statements of any kind respecting products of competitors, or giving delusive warnings to the public against the use thereof. (Nov. 4, 1939.)

2571. **Skin Lotion—Qualities and Institute.**—Casnati Derm-Esthetic Institute, Inc., a corporation, engaged in the sale and distribution of a product designated "Fermo-Derm" for use as a cosmetic or skin

lotion, in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Casnati-Derm-Esthetic Institute, Inc., in connection with the offering for sale, sale and distribution of its product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements or advertising matter of whatever kind or character or in any other way of statements or representations which directly assert or import or imply that said product is a rejuvenator or will restore the body of the user to a more youthful condition, or that the use of said product will draw all clogging substances from the pores, or that it shows the same chemical analysis as the life-giving essentials of healthy glands, or that it will stimulate the facial glands and nerves or that it will accelerate circulation, or feed the skin, reenergize the muscles or revitalize the supporting tissues until they become charged with youthful virility and reproduce themselves, or that it will eliminate blackheads or correct oily skin and enlarged pores, or that it is an effective treatment for infections such as acne, pimples, or other similar skin blemishes, or that its use will result in firm tissues, strong and elastic muscles, or a skin that is taut, fair, and fresh and free from lines. Said corporation also agreed to cease and desist from the use of the word "Institute" as part of its corporate or trade name or in any other way so as to import or imply that the business conducted by it is that of an institute or organization for the promotion of dermatological study or of learning, philosophy, art or science. (Nov. 4, 1939.)

2572. **Cleaning Preparation for Rugs, Upholstery, Etc.—Qualities.**—Vapoo Products Co., Inc., a corporation engaged in the business of manufacturing a product containing material known as Arctic Syntex M for use in the cleaning of rugs, carpets, upholstery, and the like, and in the sale and distribution of said product under the trade name "Vapoo" in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Vapoo Products Co., Inc., in connection with the sale, offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertising or printed matter of whatever kind or description or in any other way:

1. Of the word "Sanitizes" or of any other word or words of similar implication as descriptive of said product or of the properties or qualities thereof, the effect of which tends or may tend to convey the belief to the purchasers that the said product is effective as a germicide or an antiseptic.

2. Of any statement or representation which directly asserts or imports or implies that said product will remove all stains regardless of the cause thereof. (Nov. 8, 1939.)

2573. **Beauty Preparations—Qualities.**—Apex News and Hair Co., Inc., a corporation, engaged in the operation of a number of schools for beauty culture in different cities and in the manufacture and the sale and distribution to members of the colored race of beauty preparations for the skin and hair, in interstate commerce, in competition with corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Apex News and Hair Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

a. Representing that its Apex Skin Bleach or any similar product, instantly lightens the complexion, or brings to the skin or the complexion new life and color or youthful vitality; or that it is a skin purifier; or without proper qualification that it makes the skin clear or beautiful; or inferentially or otherwise; that it can be depended upon to remove tan, freckles, liver spots, blackheads, pimples, collar marks, sallowness, sunburn, acne, or any other blemishes.

b. Representing that any of its products Apex Pomento, Apex Scalp Cream, Apex Special Hair Grower, Apex Pomade, Apex Cocoanut Oil Shampoo or similar preparation will correct dandruff, nourish the scalp, stimulate, promote or produce a growth of hair; nourish or stimulate the hair roots; or is an effective remedy for conditions of thin hair, falling hair or thin temples; or materially aids in the production or promotion of a quick, healthy growth of hair.

c. Designating or otherwise describing or referring to any of its products as a "Hair Grower." (Nov. 8, 1939.)

2574. **Sporting Goods and Trophies—Association, Business Status, Composition, Etc.**—Wayne G. Emmelmann, sole trader as Central States Basket Ball Association and also as Central States Amateur Independent Basket Ball Association, engaged in the sale and distribution of sporting goods and athletic and school trophies, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the

following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Wayne G. Emmelmann, in connection with his sale and distribution of such merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use in his trade name or in any other manner as applied to his business of the word "Association," either alone or in connection with any other word or words; or the use of any similar term, title, or designation the effect of which is to import or imply or cause the belief that such personal business enterprise is either a voluntary association of individuals for a common end or a body of persons organized for the prosecution of some purpose.

(*b*) The use of any title or fictitious designation such as "Secretary" in the conduct of his business and promotional undertakings, having the capacity or tendency to mislead prospective purchasers or the public as to the nature, organization, or character thereof; or in any way holding himself out as an official or representative of any group or body which does not in fact exist.

(*c*) Representing that the so-called Central States Basket Ball Association is the outstanding organization of America, or that it is an organization; or that any such purported organization publishes an "Association Co-operative Catalog"; or that the business conducted by him individually is "the sales division" of such alleged association;

(*d*) Representing that his business is a "Co-operative Service," or was started or is maintained by some association, "not to commercialize basketball" but only to "make it possible for all schools and organizations to purchase their athletic supplies at sane prices"; or in any other way, directly or inferentially, representing that his individual business for personal profit is a cooperative undertaking by a group or association for the mutual benefit of its members and other interested parties;

(*e*) The use of the term "Sunburst Gold" to represent, designate, or describe any product not made of gold; and from the use of the word "Gold" either independently or in connection with the word "Sunburst" or with any other word or words, in a way which may import or imply that said products are composed in whole or in part of gold, when such is not the fact.

(*f*) Representing, designating, or describing a product as "Silver" which is only finished, plated, or coated with silver; or use of the word "Silver" either independently or in connection with any other word or words, in a way which may import or imply that a product is composed in whole or in part of silver, when such is not the fact. (Nov. 9, 1939.)

2575. **Razor Blades, Soap, Combs, Shoe Polish, Etc.—Manufacturer and Value.**—W. Raymond Roose, individual, trading as "Certified Products Company," engaged in the business of selling novelties and other merchandise, such as razor blades, soap, combs, shoe polish, and the like, in interstate commerce, in competition with other individuals and firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

W. Raymond Roose, in connection with the sale and distribution of his products in interstate commerce, agreed to cease and desist from:

(*a*) The use of the word "manufactured" or of any other word or abbreviation of similar import, on his letterheads or in his advertising matter or in any other way so as to imply or the effect of which tends or may tend to convey the belief to purchasers 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.

(*b*) Stating or representing that products sold by him, either as individual items or in groups, have an alleged valuation which is fictitious and/or in excess of the price for which said product or group of products can be and customarily is purchased in the usual course of business. (Nov. 9, 1939.)

2576. **Lingerie, Hosiery, Shirts, Cameras, Clocks, Etc.—Lottery Schemes and Devices, Advertising Plan, Free, Value and Guarantee.**—Model Lingerie Co., also trading as Champion Distributing Co., a corporation, engaged in the sale and distribution of lingerie, hosiery, men's shirts, cameras, clocks, silverware, and other merchandise in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Model Lingerie Co., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) Supplying to, or placing in the hands of others, punch boards, push or pull cards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(*b*) Mailing, shipping, or transporting to agents or to distributors or members of the public punch boards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

(*c*) Selling or otherwise disposing of any merchandise by the use of punch boards, push cards or pull cards, or other lottery devices.

(*d*) Representing that the sale of premium merchandise by means of push cards or similar devices is a "Unique plan of advertising"; or by the use of any other word of similar implication, that any merchandising plan involving a lottery scheme, gaming device, or gift enterprise is intended for mere advertising purposes or is other than a method of disposing of merchandise.

(*e*) Representing that any goods or articles are given "free" or as gratuities when the receipt thereof is contingent upon the payment of money or the rendering of services.

(*f*) The use of any fictitious figures purporting to be the "value" of articles of merchandise which is in excess of the price for which such or similar articles are regularly sold or can be obtained in the usual course of business.

(*g*) The use of the words "guarantee" or "guaranteed" or any other words of similar meaning, in connection with the advertising, sale, or offering for sale of its merchandise, unless whenever so used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security, for example, refund of purchase price. (Nov. 10, 1939.)

2577. **Baby Chicks and Hatching Eggs—Qualities and Tests.**—Blue Ribbon Hatchery, Inc., a corporation, engaged in the chick hatchery business (including custom hatching) and in the sale and distribution in interstate commerce of hatching eggs and chicks incubated at its place of business from eggs purchased from various poultry farmers, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

With respect to blood testing for the control of pullorum disease on any farm or poultry plant, the National Poultry Improvement Plan, approved by the United States Department of Agriculture, provides among other things that chicks from non-pullorum-tested flocks shall not be incubated, hatched, or brooded in the same room as chicks from other flocks so tested; and any chick incubated or hatched in the same room containing eggs and chicks from both tested and untested flocks is not properly designated or described as blood tested as the term is understood and accepted by the trade and the public.

Blue Ribbon Hatchery, Inc., in connection with the offering for sale, sale, and distribution of its hatching eggs and chick products in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from:

(*a*) Advertising or representing in any way that hatching eggs which it sells or offers for sale are from flocks that have been either culled or blood tested or otherwise treated for any disease when such

is not the fact, or when only a portion of the flocks supplying the eggs have been so treated or tested during the current season.

(*b*) The use of any disease-control term such as "Blood Tested," or the like, in advertising or otherwise, in such manner as to have the tendency or capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that officially approved methods have been used in making these tests, when such is not the fact. (Nov. 10, 1939.)

2578. **Air Conditioning, Heating, or Ventilating Pamphlets—Nature, Price, Special Price, Opportunities, Business Status, Etc.**—Morris N. Beitman, an individual, trading under the name "Supreme Publications," engaged in the compilation of treatises in the form of pamphlets containing technical reading matter prepared from material furnished, in part, by said individual, and in part from material taken from the catalogs of manufacturers of various devices used in the air-conditioning field, 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 in commerce as set forth therein.

Morris N. Beitman, in connection with the offering for sale, sale, and distribution of his pamphlets in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on or in his pamphlets or in any other way:

1. Of the words "Complete Course" or of any other word or words of similar meaning as descriptive of said pamphlets or the effect of which use tends or may tend to convey the belief to purchasers or prospective purchasers that the said pamphlets constitute or contain a complete course in the technical science of air conditioning, heating, or ventilating.

2. Of the statement or any representation to the effect that said pamphlets were prepared by Morris N. Beitman for Chicago Technical Society.

3. Of the term "Price $10.00" or any other purported sales price representation which is fictitious or in excess of the price for which said pamphlets are sold in the usual course of business.

4. Of the word "special" as descriptive of the price for which said pamphlets are offered for sale and sold, when in fact said price is the price for which said pamphlets are regularly sold in the usual course of business.

5. Of the statement "It's no trick to obtain work in air conditioning, the field with more jobs than available trained men" or of any other statement or representation of similar implication, when in fact, that condition does not actually prevail.

6. Of the word "printer" or "printers" so as to import or imply that the said Morris N. Beitman is engaged in business as a printer of the pamphlets which he sells or that he actually owns and operates or directly and absolutely controls the plant in which said pamphlets are printed.

7. Of the words "Chicago Technical Society" in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the business conducted by the said Morris N. Beitman is in any way connected or associated with that of the Chicago Technical College, of Chicago, Ill. (Nov. 10, 1939.)

2579. **Cookies and Cakes—Domestic Product as Imported and Home Made.**—Sterling Cake Co., Inc., a corporation, engaged in the manufacture of cookies and cakes, and in the sale and distribution thereof in interstate commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Sterling Cake Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the seal of Holland or any simulation thereof on containers in which its products are sold and distributed, on circulars enclosed therein, or in any other manner the effect of which is to import or imply or tend to convey the belief to purchasers or the public that such product is imported from Holland when such is not the fact.

(*b*) The use of the word "Holland," either alone or in connection with the word "Damstagg" or any other word or words, in a manner importing or implying or tending to convey the belief to purchasers or the public that a product is imported from Holland when such is not the fact. If such product is of the same type as a commodity produced in Holland and the words "Holland Style" are used as descriptive thereof, then in that case the words "Holland Style" shall be accompanied by other words in type and place equally conspicuous, clearly indicating that said product is of domestic origin and that such legend refers only to the type of the product and not to its place of origin.

(*c*) Representing on its cartons, in its advertising matter or in any other manner whatsoever that such products are home made, when such is not the fact. (Nov. 13, 1939.)

2580. **Hosiery—Mills.**—Eastern Hosiery Mills, Inc., a corporation, engaged in the sale and distribution as a wholesaler of hosiery in commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the

following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Eastern Hosiery Mills, Inc., agreed to cease and desist from the use of the word "Mills" as part of the corporate or trade name under which it offers for sale, sells, or distributes its products in commerce, as commerce is defined by the Federal Trade Commission Act, and from the use of the word "Mills" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said corporation makes or manufactures the products which it sells or that it 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. (Nov. 13, 1939.)

2581. **Poultry and Livestock Feed Preparation—Qualities, Ailments, and Guarantee.**—Dawe's Products Co., Inc., a corporation, engaged in the manufacture of products variously designated as "Vitamelk," "Dawe's Vitamelk," "D. V. Base," "Vitamelk Base" and "Vitamelk Concentrate" to be used as an ingredient in the compounding of poultry and other livestock feed, and in the sale and distribution thereof and in the distribution of advertising matter pertaining thereto in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dawe's Products Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from representing:

(*a*) That "Vitamelk" or any similar product is nutritionally correct;

(*b*) That such product itself or the use thereof:

Makes higher egg production;

Causes faster growth and earlier maturity;

Causes higher hatchability and reproduction;

Increases the appetite;

Improves the flavor of meat;

Increases egg production, quality, shell strength, and texture;

Increases fertility and hatchability of eggs;

Prolongs life of layers and breeders;

Promotes blood-red combs, lustrous plumage and feather development, alert bearing, and general appearance;

Improves the quality of milk, making it richer in vitamins and minerals;

Stimulates vitality during the breeding season;

Decreases mortality;

Increases egg production;

Helps produce eggs with clear, firm whites, upstanding yolks, and improved flavor;

Stimulates and develops the reproductive organs and prolongs their life;

Results in strong and bigger chicks, fewer runts, cripples, and second graders;

Increases vitality during the breeding season, leading to larger litters, stronger pigs, and lessened mortality;

Encourages larger litters of bigger, stronger, and finer pups;

Promotes rapid growth without weakening general physical condition;

Aids mental development; or

Shortens the shedding period—

Unless, in direct connection with each and every such representation, it be clearly and unambiguously stated that the benefits claimed will obtain only when there is a deficiency or suboptimal supply of vitamins or other constituents of said product in the feed or ration ordinarily provided such poultry or animals.

(*c*) That said product is scientifically balanced and united—not merely mixed, or that it is a compound.

(*d*) That the ingredients as found in "Vitamelk" are more desirable and effective than would be the same ingredients in other forms.

(*e*) Generally, or without proper notation of circumstances, that animals receiving "Vitamelk" are healthier, more vigorous, and have larger appetites.

(*f*) That "Vitamelk" is the one or only source offering vitamins in liberal amounts and/or rare minerals in necessary amounts.

(*g*) That said product supplants, replaces, improves upon, and/or is more effective than cod-liver oil, vitamin concentrates, iodine, mineral supplements, yeast products, or similar supplements, or any combination of them.

(*h*) That said product favorably affects egg production, hatchability, and fertility, unless it be clearly indicated that egg production, hatchability, and fertility depends upon the breed, condition of health, and other factors in addition to diet, and that the claimed benefits apply only in case certain elements are deficient in the food ration.

(*i*) That in the cases of poultry and farm animals:

A deficiency of vitamin A results in colds, infections or paralysis.

A deficiency of vitamin B results in loss of appetite or in nervousness.

A deficiency of vitamin D results in anemia.

A deficiency of vitamin E results in sterility, paralysis or nutritional abortions.

(*j*) That either vitamin C or vitamin B_4 or B_6 is of benefit to poultry or domestic livestock; or that a deficiency thereof would be detrimental or result in loss of weight, energy or appetite, in anemia, weakness, poor growth or lack of growth, or in paralysis, spastic gait, denuding, dermatitis, or general debility.

(*k*) That either vitamin B_2 (*g*) or the filtrate factor is effective as to farm animals other than poultry; or that a lack of either would result in loss of weight, lowered vitality, shortened life, swollen eyelids, watery eyes, inflamed nose, or growth cessation for livestock.

The said Dawe's Products Co., Inc., further agreed not to use the words "Guarantees" or "Guaranteed" or any words of similar meaning, in connection with the advertising, sale, or offering for sale of its products unless, whenever so used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security, for example, refund of purchase price. (Nov. 14, 1939.)

2582. **Brief Cases—Composition and Qualities.**—Standard Brief Case Co., a corporation, engaged in the business of manufacturing brief cases and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Standard Brief Case Co., in connection with the offering for sale, sale and distribution of its products in commerce as defined by the said act, agreed to cease and desist from:

1. The use of the words "Nu Leather" as a trade name, stamp, brand, or label for such of said products as are not composed of leather or hide, and from the use of the word "Leather" either alone or in connection with the letters "Nu" or with any other word or words or in any other way or as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the products referred to are composed of leather or hide, the skin of a large animal, as an ox, when such is not the fact.

2. The use of the statement "Will not crack—will not scuff—will not peel—is water-proof" or of any other statement attributing such qualities, or any thereof, to the so-called "Nu Leather" products, when in fact, said products are not proof against cracking, scuffing, peeling, or water.

3. The use of the words "Genuine Cowhide" or the word "Cowhide" either alone or in connection with any other word or words as a brand

or label for products so as to import or imply that such products are composed of leather made from the top or grain cut or layer of the cowhide. If said products are composed of leather made from an inner or fresh cut of the hide, and the word "Cowhide" is used as descriptive thereof, then in that case, the word "Cowhide" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are not composed of the top or grain cut layer of the hide. (Nov. 14, 1939.)

2583. **Quilts, Etc.—Price, Special, Introductory or Limited Offer, Composition, Use, Size and Connection.**—Hudson Bay Down Quilt Co., Inc., a corporation, engaged in conducting a business consisting of the sale and distribution of quilts or comforts and pillows in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth herein.

Hudson's Bay Co. is a corporation organized under English laws in 1670, having its present principal place of business at Vancouver, British Columbia, from which it sells and for a considerable number of years has sold and/or controlled the sale and distribution of merchandise, including blankets and other bed coverings, throughout the United States and in various other countries under its corporate and trade name, containing the words "Hudson's Bay." It has thus built up under said name and now enjoys a favorable reputation not only in the United States of America but throughout the civilized world.

Hudson Bay Down Quilt Co., Inc., a corporation owned and controlled by Isadore Buchman, in connection with the offering for sale, sale or distribution of its products in commerce, as commerce, is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements and advertising matter or from authorizing or permitting the use by its salesmen or agents:

(*a*) Of the statement "Two Quilts for Price of One" or "One for Half Price" or of any other similar statements or representations which directly assert or clearly import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said corporation is offering for sale or sells quilts at one-half the price ordinarily charged for a single quilt, when such is not the fact.

(*b*) Of any fictitious figure purporting to be the regular sales price of its products or of any representation that an offered price is an "off-season", "special", "introductory" or "half" price or that the acceptance of an offered price is limited as to time, when such are not the facts.

Said corporation also agreed to cease and desist from the use in advertising or printed matter or in any other way:

(*a*) Of the word "satin" or "taffeta" or any other silk-connoting word as descriptive of fabrics not composed of silk, the product of the cocoon of the silk worm.

(*b*) Of the word "satin" or "taffeta" or other silk-connoting word so as to import or imply that the fabrics to which said words or any thereof refer are composed of silk, when such is not the fact. If the word "satin" or "taffeta" is used to properly describe the type of weave or construction of a rayon fabric, then in that case, the word "satin" or the word "taffeta" shall be immediately accompanied by the word "rayon" printed in equally conspicuous type so as to indicate clearly that said product is in fact rayon, as for example, "Rayon Satin," "Rayon Taffeta."

(*c*) Of the word "Clairanese" or "Celanese" either alone or in connection with the word "Satin" or "Taffeta" or with any other word or words as a trade name or designation for or as descriptive of rayon products, unless the term "rayon" is set forth as a part of and in immediate connection with such name, designation or description, and with at least equal conspicuousness, prominence and emphasis.

Said corporation further agreed to cease and desist from offering for sale or selling products composed of rayon, either in whole or in part, without disclosure of the fact that said products are or contain rayon, made clearly and unequivocally in the labeling and invoicing and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published.

Said corporation also agreed to cease and desist from representing in advertising or printed matter, through its salesmen or agents, or otherwise, that its products are used in moving picture scenes, when such is not the fact.

Said corporation further agreed to cease and desist from advertising or representing quilt sizes which are not the true sizes of the finished products. If the "cut size" is indicated, the same is to be followed by a statement indicating the finished size.

Said corporation further agreed to cease and desist from the use of the words "Hudson Bay" as part of its corporate or trade name or in connection with the advertising or sale of its products so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said corporation is a branch of or is in any way connected or associated with Hudson's Bay Co. of Canada, or that it is selling the products of the said Hudson's Bay Co. of Canada. (Nov. 15, 1939.)

2584. **Wrenches and Other Tools—Standard Specifications Conformance.**—Lectrolite Corp., a corporation, engaged in the manufacture

of wrenches and other tools and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

In the steel industry and trade chrome vanadium steel is a kind of tough ductile steel alloyed with both chromium and vanadium, used especially for tools and machine parts that are subjected to severe service. The standard specifications for chromium steel used in tools provide that such products shall contain from 0.8 to 1.1 percent chromium and from 0.15 to 0.18 percent vanadium. Tools which do not meet these specifications are misbranded when offered as "chrome vanadium steel."

Lectrolite Corp., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from advertising, labeling, branding, stamping, or otherwise designating any tools, wrenches or other steel products as "chrome vanadium steel" or "chrome vanadium" which do not actually meet the standard specifications entitling them to be properly so designated. (Nov. 15, 1939.)

2585. **Sales Promotion Devices—Lottery Devices.**—Martin L. Bechtold and David Ginsberg, copartners, trading under the firm name of Repeat Sales Co., engaged in the sale and distribution in interstate commerce, of secret panel sales promotion cards intended for use in stimulating retail sales of merchandise, in competition with other partnerships and firms and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Martin L. Bechtold and David Ginsberg, and each of them, in connection with their sale and distribution of sales promotion devices or other merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) Selling and distributing sales promotion cards so designed that their use by retail merchandise merchants constitutes or may constitute the operation of a lottery, game of chance, or gift enterprise.

(*b*) Supplying or placing in the hands of retail merchants or others sales promotion cards or sales poster 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. (Nov. 15, 1939.)

2586. **Typewriter Ribbons and Carbon Paper—Manufacturer and Business Status.**—Earl Herstam, an individual, trading as Alliance Ribbon

and Carbon Manufacturing Co., engaged in the sale and distribution of typewriter ribbons and carbon paper, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Earl Herstam, in connection with the sale and distribution of his products in commerce, as defined by said Act, agreed to cease and desist from:

(*a*) The use of the word "Manufacturing" as a part of the trade name by which he conducts his business or the use of the words "Factory, New York" on his letterheads, invoices, or other trade literature, or in any other way directly or indirectly representing that he owns, operates, or controls the factory in which the products sold by him are made, when such is not the fact.

(*b*) The use of any feigned or fictitious designation such as "Distributor" as descriptive of his business status, with the capacity and tendency to mislead, confuse, or deceive customers into the belief that he is a duly appointed agent of some concern other than himself for the marketing of its merchandise or commodities, when such is not the fact. (Nov. 15, 1939.)

2587. **Tile—Nature.**—Whiting-Mead Co., a corporation, owner of a registered trade name "Wonder Tile Company," engaged in the business of manufacturing certain building materials, including a product designated "Wonder-Tile" and in sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Whiting-Mead Co., in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from representing, directly or indirectly, by the use of the word "Wonder-Tile" or "tile" that its products are "tile" as that word is understood in the building trade and by the general public, unless, in immediate conjunction with the words "Wonder-Tile" or "tile," there appear in equally conspicuous type a word or words designating the material or substance of which the products are made, such as: "wood tile," "glass tile," "rubber tile," "asbestos tile," "copper tile," "cork tile" or "metal tile." (Nov. 15, 1939.)

2588. **Furniture—Custom Made and Composition.**—Samuel Schlossman & Sons, Inc., a corporation, engaged in the sale and distribution of furniture from its retail stores, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships

likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Samuel Schlossman & Sons, Inc., in connection with its sale and distribution of furniture or other merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing furniture or other merchandise to be "Custom Made" or "Custom Grade" unless and until such furniture or other merchandise so designated is actually made upon the specific orders of the customers who buy them.

(*b*) Advertising or selling any furniture or other merchandise as being made of "Mellow Maple," "Modern Walnut," "Inlaid Walnut," "Burl Walnut," "Rosewood" or other wood of recognized quality, when such is not the fact; or in any way representing gum wood or other inferior material as being maple, walnut, rosewood, or other high quality wood; or advertising or selling imitations of high quality woods without full and nondeceptive disclosure of such simulation. (Nov. 17, 1939.)

2589. **Lamps, Lanterns and Heaters—Capacity, Qualities and Guarantee.**—S. Piepgras, sole trader, trading as Piepgras Light Co., engaged in the sale and distribution of lamps, lanterns and heaters, including a gasoline lantern designated No. 18 "Giant," in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

(*a*) Describing his No. 18 "Giant" lantern or any similar lantern as a 300 candlepower light or as having 300 candlepower or the equivalent thereof, when such is not the fact; or representing the candlepower or heating or lighting capacity of any other lamp, lantern or heater sold by him as being greater than that established by competent scientific tests.

(*b*) Representing that such or any similar lamp or lantern makes a chicken cooper or other enclosure "light as daylight," or that such lamp or lantern is equal to 20 ordinary lamps or lanterns or any number thereof unless competent scientific tests support such claims.

(*c*) The use of the word "guaranteed" or the word "guarantee" or any other words of similar meaning in connection with the advertising, sale or offering for sale of his products unless whenever used clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security as, for example, refund of purchase price. (Nov. 17, 1939.)

2590. **Hosiery Preparation—Qualities.**—Oscar E. Swenson and Harry R. Leahy, copartners, trading under the firm name and style "Oscar E. Swenson Company" engaged in the business of manufacturing a

preparation to be used as a treatment for silk stockings, and in the sale thereof under the trade name or designation "PRE-VENT-A-RUN," 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 in commerce as set forth therein.

Oscar E. Swenson and Harry R. Leahy in connection with the sale and distribution of their preparation for hosiery treatment in commerce, as commerce is defined by the Federal Trade Commission Act, agreed and each of them agreed to cease and desist from the use of the term "PRE-VENT-A-RUN" as a trade name or designation for their said preparation, and from the use of the said term or of any other word or expression of similar implication in connection with said preparation, the effect of which tends or may tend to convey the belief to purchasers that said preparation, used as a treatment for silk stockings, will do away with or obviate the possibility of a run or runs in such hosiery. (Nov. 17, 1939.)

2591. **Optical Goods—"Factory-to-You," Manufacturer, Guarantee, Composition and "Certified."**—Harry Greenberg, sole trader, trading as Great Lakes Optical Co., engaged in the sale and distribution of optical goods by United States mails and otherwise in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Greenberg, in connection with his sale and distribution of optical goods or other merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing that any goods bought and sold by him at a profit are available to the purchaser at "Factory-to-you prices"; or that such goods are delivered direct from "factory Great Lakes Optical Company" when there is no such factory; or representing by the use of words, terms, or expressions of similar import that his customers get their goods at wholesale prices direct from the factory, or otherwise avoid paying a profit to an intermediate vendor of the goods, when such is not the fact.

(*b*) Representing himself to be a manufacturer of frames, mountings, lenses or any other merchandise when he neither owns, operates, nor controls a plant or factory in which such goods are made.

(*c*) Describing his goods as "guaranteed merchandise," or using the word "guarantee" or the word "guaranteed" or any other words of similar meaning in connection with the advertising, sale or offering for sale of his merchandise unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of

exactly what is offered by way of security, for example, refund of purchase price.

(*d*) Misbranding or in any other way misrepresenting the gold content or other properties of the merchandise sold by him, in a manner having the capacity and tendency to mislead or deceive purchasers as to the true nature and quality thereof.

(*e*) The use of the word "certified" as applied to his merchandise. or in any other way, representing that such goods have been duly attested in writing by some recognized independent agency as to the quality and nature thereof. (Nov. 16, 1939.)

2592. **Soot remover and Flue Cleaner—Qualities and "Exclusive Licensed Manufacturer."**—Boyer Chemical Laboratory Co., a corporation, engaged in manufacture of a variety of products including a soot remover and flue cleaner designated "Boyer's Zinc Soot Destroyer," and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Boyer Chemical Laboratory Co., in connection with the sale and distribution of its soot remover and flue cleaner in commerce as defined by said Act, agreed to cease and desist from:

(*a*) Generally or without proper qualification representing that Boyer's Zinc Soot Destroyer or any similar product burns up the soot in chimneys or that by the use thereof the chimney soot turns into a light white powdery ash, or the chimney is made "clean" or given a "perfect draft"; or that it may be relied upon to prevent chimney fires.

(*b*) Representing itself to be "Exclusive Licensed Manufacturers" of any standard product for which there is no patent or exclusive right to manufacture; or representing by the use of any other words, terms, or expressions of similar import, that it has an exclusive license to manufacture a product or commodity, when such is not the fact. (Nov. 16, 1939.)

2593. **Rugs—Composition and Nature of Manufacture.**—Samarkand Rugs, Inc., a corporation, engaged in the importation of cotton rugs and in the sale and distribution thereof under the brand "Samarkand Rugs" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

An oriental rug, as known to the public or the trade, is a hand-woven or hand-knotted one-piece rug or carpet made in the Orient, especially in Asia. It has a pile produced by knotting around one or,

generally, two warps of cotton or wool one or several tufts of colored woolen or silk (or in a few instances cotton) yarn, over each row of which a woof shot is passed. The texture, workmanship, and especially, the design, vary with the locality in which the rugs are produced and with the mode of living and traditions of the weavers. Oriental rugs fall into six main groups: Turkish, Persian, Caucasian, Turkoman, Chinese, and East Indian. A characteristic common to all these rugs is that the design and colors appear on the backside as well as the front.

A "replica" is a duplicate—that which resembles or corresponds to something else; and a "reproduction" is a counterpart or reconstruction of something else. A rug simulating or copying the design or pattern only of an Oriental or a Chinese rug and labeled "Oriental Replica," "Oriental Reproduction," "Chinese Replica" or "Chinese Reproduction" is misbranded in that it connotes all the characteristics of a genuine Oriental or Chinese rug and implies that it possesses the fibers and the almost universally known superior wearing and appearance qualities.

Samarkand Rugs, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use in its printed or advertising matter or as a brand for its rugs of the words "Oriental Replica," "Oriental Reproduction," "Chinese Replica," or "Chinese Reproduction" as descriptive of rugs which are not in fact such Oriental or Chinese replicas or reproductions; and from the use of the said words or any thereof in any way so as to import or imply that such rugs are made or manufactured of the materials and in accordance with the processes used in the manufacture of Oriental and/or Chinese rugs, when such is not the fact; and from the use of the word "Oriental" or the word "Chinese" in connection with any rug which does not contain all the inherent qualities and properties of Oriental or Chinese rugs, unless, where properly used to describe the design or pattern only thereof, the word "Oriental" or the word "Chinese" shall be immediately accompanied by a word such as "Design" or "Pattern" printed in type equally conspicuous, so as to indicate clearly that only the form delineated on the surface of the rug is a likeness of an Oriental or a Chinese type, as, for example, "Oriental Design," "Oriental Pattern." (Nov. 21, 1939.)

2594. **"Karmalax"—Qualities.**—Merchandising Associates, Inc., a corporation, engaged in the manufacture of a compound or product called "Karmalax" and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Merchandising Associates, Inc., also agreed that it will cease and desist from the use, as a trade name for its product or otherwise in connection with the advertisement or sale of said product in commerce as defined by said act, of the word "Karmalax" or the letters "lax" either alone or in connection with any word or words or in any other way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or to the consuming public that said product is a laxative or has laxative qualities. Said corporation also agreed to cease and desist from the use of or from selling to or placing in the hands of others for their use any advertisements or advertising matter which pertains to the so-called "Honey-Krushed Bread" and which carries statements or representations such as "Avoid constipation in the natural way" or "Relieves constipation nature's own way" or any other similar statement or representation, the effect of which tends or may tend to convey the belief to the purchaser or consumer that the said bread possesses qualities of such nature as will relieve, remedy, or cure constipation. (Nov. 25, 1939.)

2595. **Enlarged Colored Photographs—Association, Nature, Value, Special Advertising Offer, Free, Coercive, and Forced Purchasing and Nature of Operations.**—Rodney R. Williams, sole trader as Universal Art Association, engaged in the sale and distribution of enlarged colored photographs by mail order and otherwise in interstate commerce in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Rodney R. Williams, in connection with his sale and distribution of tinted photographs in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use in his trade name or in any other manner as applied to his business of the word "Association," either alone or in connection with any other word or words; or the use of any similar term, title, or designation the effect of which is to import or imply or cause the belief that such personal business enterprise is either a voluntary association of individuals for common ends or a body of persons organized for the prosecution of some purpose.

(*b*) Representing directly or in any other manner that colored or tinted photographs or photographic enlargements are paintings, oil paintings, or "finely finished paintings."

(*c*) Using the term "painting" either alone or in conjunction with any other terms or words in any way to designate, describe, or refer to colored or tinted photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

(*d*) Representing that pictures and frames have selling prices or values which were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold and were intended to be sold, and greatly in excess of such or similar products.

(*e*) Representing that a drawing or similar device used in the sale of his products is for the purpose of introducing a new type of painting or to advertise his business; or that through the use of such "draw" or of "lucky" certificates, coupons, envelopes, special discount checks, blanks, slips, or any other device, plan or scheme, or special advertising offer, that any customer would thereby obtain a financial advantage or be entitled to receive any picture free or receive a substantial discount or reduction in the price of any picture or pictures.

(*f*) Failure to disclose, clearly and unmistakably, at the time the order for a picture is taken, that due to its peculiar size and shape a frame to fit it cannot be obtained elsewhere; concealment of the price of such frame until it is delivered attached to the picture; or the use of coercive methods of whatsoever kind or nature to induce the purchase of such frame, such for example as refusal to deliver the paid-for picture or the original photograph loaned him for reproduction, unless the buyer pays cash or executes a promissory note also for the frame, professedly sent for approval before purchase.

(*g*) Representing that funds collected through the sale of such pictures are to be used for the purchase of brushes and paints for college students, or for any other purpose than the personal aggrandizement of the said Rodney R. Williams, his agents and representatives, when such is not the fact. (Nov. 25, 1939.)

2596. **Sulphur Preparation—Composition.**—Vincent Christiana, Inc., a corporation, engaged in the manufacture of pharmaceutical products including a sulphur preparation designated "Thiosol" and in the sale and distribution thereof in interstate commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist, from the alleged unfair methods of competition in commerce as set forth therein.

Vincent Christiana, Inc., in connection with the sale and distribution of its pharmaceutical products in commerce as defined by said act, agreed to cease and desist from describing or referring to its product "Thiosol" or any other product of similar composition as being a chemically true solution of colloidal sulphur when such is not the fact, or from the use of words or expressions of similar import or meaning which convey or have the capacity to convey the belief to purchasers that the product contains colloidal sulphur only, when any other ingredient not true colloidal sulphur is present. (Nov. 27, 1939.)

2597. **Correspondence Courses—Place of Business, Employment, Per-**

sonnel, or Staff and Nature of Operations.—Midland Television, Inc., a corporation, engaged in the business of conducting resident and correspondence courses of instruction in radio, television, and airline radio operation, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of similar courses in interstate commerce, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Midland Television, Inc., in connection with the sale and distribution in commerce as defined by the said act, of its courses of instruction in the radio field, agreed to cease and desist from:

(*a*) the use on its stationery or in its advertising or printed matter or in any other way of illustrations, pictures or drawings or other representations of the Kansas City Power and Light Building and the KMBC broadcasting tower, or of either thereof, so as to import or imply or the effect of which tends or may tend to convey the belief to students or prospective students that the said building and/or tower are or is the property of the said corporation or that the said building is occupied in its entirety by the said corporation as a part of the school conducted by the said corporation.

(*b*) the use in its advertising or printed matter or otherwise of pictorial representations formed by combining two or more pictures in such manner as to convey an untrue or misleading impression to students or prospective students with respect to the quarters in which they will receive their training.

(*c*) the use in its advertisements and advertising matter or in any other way of statements or misrepresentations which tend or may tend to convey the belief to students or prospective students that such students are virtually assured of employment upon completing their radio work at the school or that the possibilities or likelihood of such students for immediate placement in highly remunerative or other jobs in the radio industry are greater than they actually are.

(*d*) stating or representing in its advertisements or otherwise that any one of the persons connected with its "Technical Staff" is a "member of the Institute of Radio Engineers" when such is not the fact.

(*e*) Stating or representing that the sole purpose of "Midland Training" is to help its students make more money, when such is not the fact. (Nov. 28, 1939.)

2598. **Nail Preparation—Qualities.**—Hampden Sales Association, Inc., a corporation, engaged in the purchase of a nail preparation in bulk which, after packaging, it sells and distributes under the trade name "Nailcare" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist

from the alleged unfair methods of competition in commerce as set forth therein.

Hampden Sales Association, Inc., in connection with the sale and distribution of its product in commerce, as defined by said act, agreed to cease and desist from the use on its labeling or in any other way of statements which directly assert or the effect of which tends or may tend to convey the belief to purchasers that said product, when used on the nails of the hand or foot, will prevent breaking thereof or will nourish or feed the same or the skin, when such is not the fact. (Nov. 30, 1939.)

2599. **Rupture Support or Truss—Qualities.**—Frederick L. Watson, an individual trading as Faultless Appliance Co., engaged in the sale by mail order as well as by personal contact of a rupture support or truss of his own design, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Frederick L. Watson, in connection with the sale and distribution of his product in commerce, as defined by said act, agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or description or in any other way of statements which directly assert or clearly import or imply that difficulties associated with rupture will be cured, ended, or permanently relieved by the use of said device, or that said device will afford adequate support for all varieties and grades of hernia, or that the use of said device will do more than give temporary support for certain varieties of hernia, when such is not the fact. (Nov. 29, 1939.)

2615. **Shirts—Government Tests.**—Superior Shirt Co., a corporation, engaged in the business of manufacturing shirts and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Superior Shirt Co., in connection with the sale and distribution of its garments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use, on its labels or tags affixed to said garments or in any other way, of the statement "U. S. Tested" or of any other statement or representation of similar implication, the effect of which tends or may tend to convey the belief to purchasers that the said garments have been tested by the United States Government or by some branch thereof, when such is not the fact. (Nov. 18, 1939.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS[1]

0779.[2] **Medicinal Preparation—Qualities.**—W. K. Buckley, Inc., a corporation, 26 Forbes St., Rochester, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Buckley's Mixture and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Will cure colds.

(*b*) Is a competent, effective remedy or treatment for coughs not due to colds or bronchial irritations.

(*c*) Will act like a "flash" or quickly upon the diseased condition commonly known as a cold. (Oct. 13, 1939.)

01427.[2] **Medicinal Preparation—Qualities.**—The Siticide Co., a corporation, Commerce, Ga., vendor-advertiser was engaged in selling a preparation for the treatment of Scabies (Itch) designated Siticide and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That a single application of Siticide will cure the Itch caused by scabies parasites.

(*b*) That Siticide penetrates the skin.

(*c*) That the Itching sensation accompanying scabies disappears immediately upon or without the lapse of an appreciable length of time following the application of Siticide to the skin. (June 17, 1939.)

01658.[2] **Medicinal Preparation—Qualities.**—Jim Bourland, an individual trading as, Star Products Co., 1901 Runnels St. Houston, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated Blue Star Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) By the use of such terms as "Stop Skin Itch", "Puts Stop to Itching", "Put a stop to itching torture", or otherwise that the effect of "Blue Star Ointment" in relieving the itching due to eczema, rash, tetter, ringworm, pimples, scabies, between toes, or other similar superficial conditions of the skin, is permanent.

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[1] The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, June 1, 1939, to November 30, 1939, inclusive. For digests of previous stipulations, see vols. 14 to 28 of Commission's decisions.

[2] Supplemental.

(*b*) By the use of such terms as "extra effective", "strikingly effective" or otherwise that the effect of "Blue Star Ointment" or of the medicines contained in it in relieving the itching or the itching torture due to eczema, rash, tetter, ringworm, pimples, scabies, between toes, or other similar superficial conditions of the skin, is extraordinary or unusual.

(*c*) That "Blue Star Ointment" soothes rawness, or that it is soothing when applied to raw surfaces of the skin. (Sept. 8, 1939.)

01944.[1] **Medicinal Preparation—Qualities, Ailments and Nature of Product.**—Harold T. Maloney, an individual trading as Floradex Co., successor of Nu-Health Products Co., 178 East Long St., Columbus, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Floradex and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Floradex is marvelous or new.

(*b*) That constipation is the factor behind most human ills and ailments.

(*c*) That Floradex will keep a person from being sick, or restore or build health, or will enable one to gain vim and vigor.

(*d*) That Floradex is a benefit in removing the cause of most common ailments.

The said Harold T. Maloney further agreed to cease and desist from using the word "Food" or any other word or words of similar import or meaning in describing the product, or from otherwise representing or implying that it has any food value. (Sept. 8, 1939.)

02329.[2] **Syrup (Milk Supplement and Flavor)—Qualities, Nature, Etc.**—Wallerstein Co., Inc., a corporation, 180 Madison Ave., New York, N. Y., vendor-advertiser, was engaged in selling a syrup to be used as a milk supplement and as a flavor, designated as "Bosco" 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 all persons need the iron or copper content of Bosco, or that a spoonfull of said product as now constituted will triple the iron content of a glass of milk.

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[1] Supplemental.

[2] Substitute stipulation. Statement issued by the Commission in this matter as of October 17, 1939, was as follows:

Wallerstein Co., Inc., a corporation, 180 Madison Ave., New York City, vendor-advertiser, was engaged in selling a syrup to be used as a milk supplement and as a flavor, designated Bosco.

The Federal Trade Commission, on February 24, 1939, filed and approved a stipulation in which the vendor-advertiser, among other things, agreed to cease and desist from making the following representation:

"That said product has been approved by the American Medical Association or that its use will make milk a perfect food."

Further information has revealed that the above-quoted statement was not published at any time by the vendor-advertiser. For this reason the Commission has vacated Stipulation No. 02329 approved February 24, 1939, and accepted and approved in lieu thereof a substitute stipulation from which the above-quoted statement has been eliminated but which, in all other respects, is the same as the stipulation heretofore filed and approved February 24, 1939

(*b*) That said product is a body builder, a stimulant for the appetite, or will give one strength, energy or red blood, or enable one to resist colds or other ills, or build up vitality or weight.

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(*d*) That said product will enable one to maintain the health evidenced by summer tan or sunburn.

(*e*) That the drinking glass given with the purchase of a jar of said product is the first sanitary drinking glass.

(*f*) That said product is a chocolate syrup or chocolate Milk Amplifier, or with milk makes a chocolate drink or in any other way representing that said product is chocolate. (Oct. 17, 1939.)

02386. **Cosmetic—Qualities and Composition.**—Estelle Adler Erlan and I. Mathew Berk, copartners doing business as Botay Laboratories, 56 West 45th St., New York, N. Y., vendor-advertisers, were engaged in selling a cosmetic preparation designated Face Line Oil, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of this product will have any effect upon the "lines" or the wrinkles of the skin or in preventing their formation.

(*b*) That their product contains any substance or factor designated by the symbol "Vitamin F" necessary for the skin.

The said Estelle Adler Erlan and I. Mathew Berk, further agreed to cease and desist from the use of the designation "Vitamin F" and from the use of the term "Face Line" or any other similar term or terms to designate their product. (June 2, 1939.)

02387. **Disinfectant and Bactericide—Qualities and Safety.**—General Laboratories, Division of Pennsylvania Salt Manufacturing Co., a corporation, 1000 Widener Building, Philadelphia, Pa., vendor-advertiser, was engaged in selling disinfectant and bactericide designated B-K Powder and B-K Liquid and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That B-K Liquid or B-K Powder:

1. Kills the Baby Killers.
2. Kills the germs that cause diseases.
3. Destroys all germs "instantly."
4. Prevents disease by killing the cause.
5. Protects the flock (of poultry).
6. Kills all bacteria on contact.
7. Works "instantly" in hot or cold water solutions.
8. Sterilizes.
9. Kills all bacteria.
10. Safeguards poultry from roup, colds, bronchitis and other deadly winter diseases.
11. Insures profits and production.
12. Kills all bacteria in any temperature.
13. Is cheaper than other chlorine solutions.
14. Is more dependable than other chlorine solutions.

15. Harms nothing but germs.
16. Wrecks germs.
17. Is health insurance for poultry flocks.
18. Saves chicks; or
19. Prevents disease.

(*b*) That either of said products:

1. Will keep hens healthy, laying, paying.
2. Kills the deadly germs of colds, chick bronchitis, and other common dangers.
3. Is effective mass murder for germs.
4. Is a perfect relief from poultry diseases.
5. Purifies.
6. Relieves.
7. Is safe for baby chicks, unless qualified by the statement "when used as directed."
8. Is a reliable germicide for all sanitary purposes.

(*c*) That B-K Liquid or B-K Powder is not a poison, unless qualified by the statement "when used as directed" or similar words. (June 6, 1939.)

02388. **Shoe Polishes—Qualities and Comparative Merits.**—Griffin Manufacturing Co., Inc., a corporation, 410 Willoughby Ave., Brooklyn, N. Y., vendor-advertiser, was engaged in selling shoe polishes designated Griffin A. B. C. Wax Polish, Griffin A. B. C. Liquid Wax Polish and a white shoe dressing designated Griffin Allwite, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Griffin A. B. C. Wax Polish is waterproof under all conditions of use.

(*b*) That Griffin Allwite removes or eliminates all spots or removes or eliminates all grease and grass stains.

(*c*) That Griffin Allwite will remove any spots unless, where use of a special cleaning fluid is first necessary, such fact is stated in direct connection therewith.

(*d*) That Griffin Allwite is the only white shoe cleaner that is good for all white shoes.

(*e*) That Griffin Shoe Polishes give brighter and longer lasting shines than any other brand or are in any designated respect superior to all other brands unless such statements are adequately substantiated by competent comparative tests.

(*f*) That Griffin Shoe Polishes are by test generally or in any designated respect superior to all other brands unless and until competent and comparative tests have actually been conducted with all other brands so as to adequately substantiate such claims. (June 7, 1939.)

02389. **Poultry Feeds—Qualities, Composition and Guarantee.**—Bewley Mills, a corporation, Fort Worth, Tex., vendor-advertiser, was engaged in selling poultry feeds designated Bewley's Red Anchor Feeds and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That Bewley's Red Anchor Feeds are perfectly balanced or have been thoroughly tested under actual feeding conditions to insure better results regardless of feeding needs.

2. That Bewley's Red Anchor Feeds contain all the essential vitamins combined with a proper balance of minerals to assure chicks uniform in size with maximum growth or development, perfect feathering or low mortality.

3. That feeding Bewley's Red Anchor Feeds is a sure way to get maximum production; or more vitality or lower mortality; or better results with baby chicks; or insures better or more economical results.

4. That Red Anchor Egg Mash will mean more eggs at less cost; or that vitamin G has been added to the vitamin G found in the cereals and other ingredients used in mixing the feed; or that the vitamin G content in said mash increases hatchability or insures stronger chicks or faster growth.

5. That Red Anchor Egg Mash when fed with Bewley's Hen Scratch will keep the flock's health constantly maintained at the highest level.

6. That by the mere addition of Cod Liver Oil egg production is increased, texture of the egg shells improved, or hatchability of the eggs increased.

7. That over a definite period of time the total amount of mash consumed can be cut down materially and still production will be increased.

8. That Red Anchor Egg Mash supplies the producing hen with every element necessary for maximum production, increased vitality, increased fertility, increased hatchability, or minimum mortality.

9. That Red Anchor Egg Mash is a concentrated high grade egg mash low in crude fiber.

10. That Red Anchor All Mash Turkey Starter contains a high milk content, a special mineral balance, or increased vitamins A or D.

11. That feeding Red Anchor Egg Mash will insure more eggs, eggs of higher quality, eggs with increased hatchability, stronger chicks, increased fertility, increased hatchability, or lower mortality.

12. That numerous tests have proven that it requires less Bewley's Red Anchor Egg Mash to produce a given number of eggs than all other egg mashes.

13. That Chunkets will increase production, cut down labor costs or make poultrymen more money or that they contain a balanced variety of necessary proteins, minerals and vitamins to insure well developed pullets capable of standing the heavy strain of maximum egg production, large eggs from the start of production or eggs high in food value; or that every Chunket contains a balanced mixture of properly selected and blended ingredients; or that poultry eat more Chunkets and therefore better results are obtained.

14. That Bewley's Red Anchor Growing Mash contains a perfect balance of all essential food elements combined with increased vitamin A to fill every requirement of the growing chick; or a balanced variety of necessary proteins, minerals and vitamins to insure well developed pullets capable of standing the heavy strain of maximum egg production; or extra vitamins and other ingredients needed by growing chicks; or everything the growing chick must have to insure big, healthy, full-bodied laying hens later on that have the vitality and size to withstand the heavy strain of continued high egg production, large eggs from the start of production, or eggs high in food value.

15. That Red Anchor Starting Feeds give the baby chicks everything they need to insure a healthy start in life; insure the lives of baby chicks; increase growth and development; or furnish every element necessary for maximum results.

16. That Bewley's Anchor Turkey Egg Mash fed to breeders when they are put in laying quarters and mated will insure eggs earlier, eggs with better shells, more hatchable and stronger poults from the eggs or more No. 1 birds for the market.

17. That any specific results from using Bewley's Red Anchor Feeds are definitely "assured," "insured," or "guaranteed."

18. That the use of Bewley's Red Anchor Feeds, or any of them, will produce:

A maximum quantity of eggs; eggs high in food value; chicks uniform in size; a healthy start in life for chicks; maximum growth; perfect feathering; chicks of low or minimum mortality; well developed pullets capable of standing the heavy strain of maximum egg production; big, healthy, full-bodied laying hens later on; or any other maximum or near maximum result unless it is clearly stated in direct connection therewith that such results can be expected or obtained only if and when all other essential elements such as proper housing, cleanliness, care, water, air, etc. are provided.

19. That the use of Bewley's Red Anchor Feeds will result in:

Increased fertility of eggs; increased hatchability; improved shell texture; higher quality of eggs; eggs high in food value; more eggs at less cost; stronger chicks and poults; chicks and poultry with more vitality; better results with baby chicks; increased growth and development; eggs earlier; better shells; more #1 birds for the market; or better or more economical results, unless it is clearly stated in direct connection with such claim or claims in type and terms equally conspicuous that such increases or improvements can only be expected or obtained when the poultry or flocks have been fed and are being fed improperly balanced diets which are deficient in some minerals or vitamins or essential ingredients. (June 7, 1939.)

02390. **Underwear—Qualities, Indorsements or Approval and Composition.**—The Deimel Linen-Mesh System Co., a corporation, 38 East 31st St., New York City, vendor-advertiser, was engaged in selling an undergarment designated Dr. Deimel Linen-Mesh Underwear and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dr. Deimel Linen-Mesh Underwear:

1. Is the one or only underwear that gives "temperature control"; or
2. Is the one or only underwear that has been recommended by leading physicians for 40 years; or
3. Is the one or only underwear that will quickly absorb perspiration and allow it to evaporate; or
4. Is the one or only underwear that lets the body "breathe" or keeps skin dry or assures adequate protection.

(*b*) That Dr. Deimel Linen-Mesh Underwear has received the approval, recommendation or endorsement of the International Congress of Medicine unless the year such approval, recommendation or endorsement was so given is also and at the same time stated.

(*c*) That the wearing of Dr. Deimel Linen-Mesh Underwear:

1. Will, when substituted for woolen underwear garments or otherwise, eliminate the possibility of colds or catarrh or of bronchitis; or
2. Will provide "absolute" protection against drafts, chills, or temperature changes; or
3. Will "assure" the maximum of health and comfort under all temperature conditions; or

4. "Insures" an active skin or vigorous body; or

5. Will, in and of itself, keep the skin vigorous and healthy.

(*d*) That healthful and protective underwear must be of flaxen texture for absorbency.

(*e*) That Dr. Deimel Linen-Mesh Underwear works constantly to prevent skin rashes and eczemas.

(*f*) That the wearing of non-absorbent tightly knit textures against the skin causes a retention of poisonous waste material in the system.

(*g*) That susceptibility to colds is always indicative of an impaired activity of the skin.

(*h*) That colds occur most frequently with persons of weakened capillary circulation induced by wearing undergarments of wool or wool mixtures or otherwise, or that catarrh and bronchitis are caused by weakened capillary circulation induced by wearing undergarments of wool or wool mixtures or otherwise.

(*i*) That the wearing of woolens next to the skin, by retention of waste material or otherwise, causes congestion or inflammation of internal organs.

(*j*) That a change to Dr. Deimel Linen-Mesh Underwear will greatly lessen the danger of pneumonia, or will eliminate catarrhal and rheumatic tendencies, or will greatly improve health, or will render one insensitive to exposure, or will eliminate the possibility of colds following exposure.

(*k*) That linen is the most absorbent and durable textile fiber known, unless and until its superiority as to absorbency and durability over all other textile fibers can be conclusively shown.

(*l*) That Dr. Deimel Linen-Mesh Underwear "assures" skin dryness or eliminates the possibility of damp skin, chills or discomfort.

(*m*) That underwear made of wool or of silk or of combinations of wool and silk repels moisture, or that wool has a lower power of absorbency.

The Deimel Linen-Mesh System Co. further agreed to cease and desist:

From the use of the trade name or trade mark "Dr. Deimel Linen-Mesh Underwear," to describe or designate garments not entirely made of linen or from the use of the word linen or linen-mesh in any way to describe or designate such garments unless the other fiber or fibers present are at the same time identified and with equal conspicuousness. (June 15, 1939.)

02391. **Eye Preparation—Qualities and Unique.**—Anna Greenberg and Belle Greenberg, copartners, trading as C-E-Z-R Co., 508 Omaha Loan and Building Association Building, Omaha, Nebr., vendor-advertisers, were engaged in selling an eye wash preparation designated C-E-Z-R Eye Drops and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That C-E-Z-R Eye Drops are a competent treatment in the relief of tired or fatigued eyes; or

(*b*) That C-E-Z-R Eye Drops are unique in the manner in which they act to cleanse the eyes. (June 17, 1939.)

02392. **Radio Station Services—Power.**—Intermountain Broadcasting Corp., a corporation, Tribune-Telegram Building, Salt Lake City, Utah, operating a radio station designated KDYL, was engaged in

selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing, directly or by implication, that the power of said station is 5,000 watts unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02393. **Radio Station Services—Power.**—Lamar Life Insurance Co., a corporation, Lamar Life Building, Jackson, Miss., operating a radio station designated WJDX, was engaged in selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing in published advertisement or otherwise, that the power of said station is 5,000 watts unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02394. **Radio Station Services—Power.**—Mosby's, Inc., a corporation, Missoula, Mont., operating a radio station designated KGVO, was engaged in selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication that the power of said station is 5,000 watts, unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02395. **Radio Station Services—Power.**—Woodmen of the World Life Insurance Society, a corporation, Omaha, Nebr., operating a radio station designated WOW, was engaged in selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing in published advertisements or otherwise, that the power of said station is 5,000 watts unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02396. **Radio Station Services—Power.**—KFRU, Inc., a corporation, Columbia, Mo., operating a radio station designated KFRU, was engaged in selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing, directly or by implication, that the power of the said station is 1,000 watts unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02397. **Radio Station Services—Power.**—Minnesota Broadcasting Corp., a corporation, Wesley Temple Building, Minneapolis, Minn., operating a radio station designated WTCN, was engaged in selling the facilities, power, and energy of its station and agreed, in connection with the dissemination of future advertising to cease and desist from representing, directly or by implication, that the power of said station is 5,000 watts unless and until such power is actually authorized for use and used by the said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours. (June 26, 1939.)

02398. **Reducing Tablets—Qualities.**—Bond Pharmacals, a corporation, 2404 McKinney Ave., Dallas, Tex., vendor-advertiser, was engaged in selling concentrated food tablets, for reduction in body weight, designated 30-40 WAFERS and agreed, in connection with the dessemination of future advertising, to cease and desist from representing directly or by implication:

That 30-40 Wafers have any specific weight reduction action or will be effective in accomplishing a reduction in body weight unless it is clearly explained that the product is of value only to the extent that it tends to reduce the appetite for other foods, and should be used in conjunction with low calorie diets and exercise. (June 19, 1939.)

02399. **Waterproofing for Roofs and Walls—Qualities, Earnings and Opportunities.**—Consolidated Paint & Varnish Corp., a corporation, 1831 Willey Ave., Cleveland, Ohio, vendor-advertiser, was engaged in selling a product for water proofing and repairing roofs and walls designated "Goodyear Liquid Roof Cement or Coating" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Goodyear Liquid Roof Cement or Coating:

1. "Instantly" stops any leaks;
2. Is a "new" method for weather proofing;
3. Is not affected by heat or cold in any way;
4. Will resist vibration from any source;
5. Can be applied over any surface;

6. Is ideal for roofs of all kinds, except old rotten wood shingles;
7. Gives equally satisfactory results on all kinds of roofs; or
8. Adheres tightly to any kind of roofing material.

(*b*) That a corrugated iron roof never gives trouble after Goodyear is applied unless qualified by the words "During the life of the cement or coating" or similar words.

(*c*) That Goodyear stops leaking and rusting on a metal roof, unless qualified by the words "during the life of the cement of coating", or similar words.

(*d*) That Goodyear on gravel roofs fills up all crevices, making the roof as good as new.

(*e*) That Goodyear is the ideal coating for concrete and cement roofs, unless limited to surfaces not exposed to foot traffic.

Respondent, in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed

(*f*) Not to make unmodified representations or claims of earnings in excess of the average earnings of Consolidated Paint & Varnish Corporation's active full-time salespersons, agents or dealers achieved under normal conditions in the due course of business.

(*g*) Not to represent that such salespersons, agents or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore earned by one or more of Consolidated Paint & Varnish Corporation's salespersons, agents or dealers under normal conditions in the due course of business.

(*h*) That in future advertising where a modifying word or phrase is used in direct connection with a specified 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. (June 28, 1939.)

02400. **Facial Pack—Qualities and Indorsements.**—The Ivis Co., Inc., a corporation, 150 Pearl St., New York City, vendor-advertiser, was engaged in selling a facial pack designated Milk-Mode and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Milk-Mode or the Milk-Mode treatment will reduce enlarged pores, remove blackheads, whiteheads, or discolorations.

(*b*) That Milk-Mode is of value in the treatment of oily, coarse, drab, dry or sallow skin.

(*c*) That Milk-Mode will eliminate or bring about a reduction in wrinkles, lines, puffiness or sagging of the skin of the face or body.

(*d*) That Milk-Mode will stimulate, revitalize or tone the skin or stimulate circulation.

(*e*) That a Milk-Mode facial treatment is equal to or favorably comparable to a treatment in a beauty salon, where it is the practice in a facial treatment to massage the face.

(*f*) That a Milk-Mode facial treatment will lift out dirt and poisons from the pores and combat re-infection or that said treatment is a health bath for the skin.

(*g*) That actresses of the stage and screen have represented that a Milk-Mode facial treatment gives renewed vitality. (June 22, 1939.)

02401. **Skin Preparation—Qualities, Guarantee, Safety, and Test.**—Tenex, Inc., a corporation, Davenport, Ia., vendor-advertiser, was

engaged in selling a treatment for athlete's foot and other skin diseases designated Tenex and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Tenex is a cure for athlete's foot, ringworm or any other diseases.

(*b*) That Tenex is a competent treatment or effective remedy for—

1. Fungus nail.
2. Eczema.
3. Barber's itch (sycosis vulgaris).
4. Corns and callouses.
5. Cuts.
6. Dermatitis irritation.
7. Burning, itching skin diseases generally.
8. Skin diseases generally.
9. Skin blemishes.
10. Ringworm, unless limited to the types of ringworm for which Tenex may be effectively indicated.
11. Poison ivy and insect bites, unless limited to indicate that Tenex merely allays the itch accompanying said conditions.

(*c*) That eczema is a fungus infection or disease.

(*d*) That Tenex is a guaranteed treatment for any disease or that it will afford relief from any disease within any specified time.

(*e*) That Tenex is harmless to healthy tissue.

(*f*) That Tenex will prevent reinfection of athlete's foot conditions.

(*g*) That a test made by the Hygienic Laboratory at Washington showed Chlorthymol the principal ingredient of Tenex, has a germicidal coefficient of 220. (June 28, 1939.)

02402. **Correspondence Club—Special or Limited Offers, Undertakings, and Opportunities.**—Mary Lee Saltz, an individual doing business in her own name and as Mary Lee's Club and Correspondence Register, P. O. Box No. 445, Rolla, Mo., vendor-advertiser, was engaged in selling a list of names and persons seeking correspondents for social and matrimonial purposes and memberships in a correspondence club and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any offer is "special" unless it is less in price than the usual or regular price charged and limited in time.

(*b*) That members are suited in correspondence or married within any specified time, or at all, unless such representations are supported by sufficient investigation as to the actual facts.

(*c*) That parties seeking correspondents are worth any specified amounts, or have any specified income, or any social, business or financial standing, other than that disclosed by a competent investigation.

The said Mary Lee Saltz agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 5, 1939.)

02403. **Refrigerators—Nature, Competitive Products, Qualities, Price, and Durability.**—Gilfillan Bros., Inc., a corporation, 1815 Venice Boulevard, Los Angeles, Calif., vendor-advertiser, was engaged in selling domestic mechanical refrigerators designated Gilfillan Electric Refrigerators and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the compressors in its mechanical refrigerators have any fewer moving parts than the actual number.

(*b*) That a piston type pump is the most efficient type in all cases.

(*c*) That other types of refrigerator compressors cannot be as efficient and/or dependable as the piston type.

(*d*) That the capacity of the compressor, evaporator and condenser individually or collectively is greater by any amount than that of mechanical refrigerators of like size and quality unless such comparison is based upon scientifically recognized standards and ratings.

(*e*) That because Gilfillan Bros., Inc., manufactures its refrigerators in the western part of the United States, those refrigerators are any better suited for western operating conditions and can be sold cheaper than mechanical refrigerators manufactured elsewhere in the United States.

(*f*) That rock wool is not equalled and/or excelled in efficiency or safety by any other refrigerator cabinet insulations.

(*g*) That Gilfillan electric refrigerators are lower in price than other mechanical refrigerators of like size and quality by any amount greater than is actually a fact.

(*h*) That Gilfillan electric refrigerators will last any period of time as long as that which is understood generally by the term "lifetime."

(*i*) That all its refrigerators have the same accessories or features. (July 5, 1939.)

02404. **Antiseptic and Disinfectant—Qualities and Safety.**—Hexol, Inc., a corporation, 966 Mission St., San Francisco, Calif., vendor-advertiser, was engaged in selling an antiseptic and disinfectant designated Hexol and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Hexol is an effective antiseptic for wounds when used by washing the abrasion with Hexol solution at a dilution of 1½ tablespoonfuls of Hexol to each quart of water.

(*b*) That Hexol may be used for everything.

(*c*) That Hexol may be used as a substitute for phenol when removing helloma durum (hard corns), or that it has all the advantages of phenol or is easier to handle than phenol.

(*d*) That Hexol constitutes an adequate treatment for ulcers, fistulas and exuberant tissue.

(*e*) That Hexol will act as a sterilization agent.

(*f*) That Hexol is a reliable sterilizer or dependable and safe to use in sterilizing surgical instruments or that it is a disinfectant or germicide in any solutions weaker than competent scientific tests show are necessary to produce the results claimed.

(*g*) That Hexol is a germicide capable of killing the common pus-forming organism, Staphylococcus aureus in concentrations and periods of time less than competent scientific tests show are necessary to produce the necessary results.

(*h*) That a dilution of 1:100 of Hexol serves as an effective disinfectant for washing floors or cleaning toilets, or otherwise.

(*i*) That a 1:500 dilution of Hexol will kill Typhoid Bacilli after one minute exposure.

(*j*) That a 1:25 dilution of Hexol will kill strains of Staphylococcus Aureus Streptococcus Haemolyticus after one minute exposure.

(*k*) That Hexol is non-toxic.

(*l*) That the action of Hexol on spores is stronger than carbolic acid.

(*m*) That a 3% or 6% solution of Hexol sterilizes or kills anthrax or Subtilis spores in thirty (30) minutes.

(*n*) That there is no substitute for Hexol.

(*o*) That Hexol may be employed effectively for "all" personal and household uses. (July 6, 1939.)

02405. **Auto Polish—Earnings, Opportunities, Guarantee, and Laboratory.**—C. G. Hodapp, an individual, trading and doing business as Instant Kleen Laboratories, 114 North St. Clair St., Dayton, Ohio, vendor-advertiser, was engaged in selling an auto polish designated Instant Kleen and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That salespersons or dealers selling said product may earn or have the chance or opportunity of earning any amount which is in excess of amounts heretofore actually earned by a substantial number of persons selling said product under normal conditions in due course of business.

(*b*) That the demand for said product is so great that agents will need additional men to take care of the business.

(*c*) That any percentage of attempts to sell said product result in sales unless and until reliable statistics are available and such representation is true in the light of such facts.

(*d*) That there is no competition in the sale of this product, or that sales are guaranteed.

(*e*) By the use of the word "Laboratories" in his trade name or otherwise that he conducts or maintains a laboratory. (July 12, 1939.)

02406. **Brassiere—Qualities and Unique.**—G. M. Poix, Inc., a corporation, 99 Madison Ave., New York City, vendor-advertiser, was engaged in selling a brassiere designated AP-Uplift and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the AP-Uplift is the "only" device that gives the upward converging control to the breasts, desired by doctors, before and after baby arrives.

(*b*) That the AP-Uplift:

1. Relieves pain;
2. Removes the causes of many bust troubles;
3. Applies to all sizes of figures;
4. Corrects the defects caused by the bandage type brassiere;
5. Alleviates pain in oversize or pendulous busts;

6. Lifts the breasts to a perfectly normal, hygienically correct position;
7. Shapes the breasts smoothly, without reducing pressure, as desired;
8. Is at variance with nearly every other brassiere;
9. Does not impede circulation;
10. Recreates the figure;
11. Supports and contours the bust in a perfectly natural, comfortable and hygienic manner;
12. Reduces inflammation and swelling; or
13. Adjusts itself to any position of the body.

(*c*) That no binding, cramping or constriction are possible with the AP-Uplift. (July 14, 1939.)

02407. **Scalp Preparation—Qualities.**—Exelento Medicine Co., a corporation, Exelento Building, Atlanta, Ga., vendor-advertiser, was engaged in selling a scalp preparation designated Exelento Quinine Pomade and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That its commodity, Exelento Quinine Pomade, will grow hair or have any influence on the growth or falling out of hair, or that it will stop itchy or scaly condition of the scalp or that its action is sure. (July 14, 1939.)

02408. **Talcum Powders—Qualities, Unique and Source or Origin.**—Vadsco Sales Corporation and V. Vivaudou, Inc., corporations, 21-09 Borden Ave., Long Island City, New York, vendor-advertisers, were engaged in selling talcum powders designated Djer-Kiss Talc and Mavis Talcum Powder and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Djer-Kiss Talc in any way influences or affects body temperature.

(*b*) That Mavis Talcum Powder, in any way or for any purpose, is materially different from or more effective than other products of similar substance and used for the same or similar purposes.

(*c*) That the formula of Mavis Talcum Powder is the outcome of scientific research and experiment or that the product has a protective quality not found in any other powder.

(*d*) That Mavis Talcum Powder has healing properties or contains ingredients which make it beneficial in the treatment of skin disorders unless such representations are limited to the product's effect in drying the skin or in reducing irritation and friction.

(*e*) That Mavis Talcum Powder to any extent promotes sleep, relaxes or soothes the nerves, or reduces the amount one perspires.

(*f*) That the pores breathe or that Mavis Talcum Powder permits the pores to breathe.

(*g*) That the products Djer-Kiss Talc and Mavis Talcum Powder completely counteract or mask objectionable body odors.

(*h*) That the products Djer-Kiss Talc and Mavis Talcum Powder, with respect to their odor or substance, when applied to the body, remain effective for any purpose during the entire day of their use or for any substantial length of time.

It is also agreed by the said Vadsco Sales Corporation and the said V. Vivaudou, Inc., that they will forthwith cease and desist from:

(*i*) Using the words "Paris" or "Poudre De Talc" or any other word or words indicating French origin on the labels, cartons, or containers of, or in advertising for their products, when such products are manufactured, compounded, or packaged in the United States. (July 14, 1939.)

02409. **Men's Clothing—Composition and Earnings.**—The A. Nash Co., a corporation, 1916 Elm St., Cincinnati, Ohio, also doing business as Schaeffer Tailoring Co., vendor-advertiser, was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Designating, describing, or representing the principal fabrics used in the manufacture of its said clothing as "Wool," "All Wool," "Pure Wool," "Woolen," "Fleece," or Worsted" when such fabrics are not wholly composed of wool.

(*b*) Designating, describing, labeling, or representing as "Wool," "All Wool," "Pure Wool," "Woolen," "Worsted," or "Fleece" the principal fabric used in the manufacture of its clothing which is composed partly of wool and partly of cotton, silk, rayon, linen, or any other fiber, unless the same is designated, described, labeled, or represented as "Wool and Cotton," "Wool and Rayon," "Wool and Linen," etc., in the order of the predominating fiber content.

(*c*) Representing that salespersons may expect to earn $35 a week during their first season selling its garments. (July 24, 1939.)

02410. **Medicinal Preparation — Composition, Qualities, Etc.**—L. Lewellyn, an individual, doing business under the trade name Lewellyn Products Co., 489 West Ferry St., Buffalo, N. Y., vendor-advertiser, was engaged in selling a medicinal product designated Lewellyn's Pure Wheat Germ and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Lewellyn's Pure Wheat Germ:

1. Is rich in Vitamins A, B, E, and G;
2. Is rich in valuable mineral salts;
3. Aids digestion;
4. Nourishes nerve tissues;
5. Prevents premature old age symptoms; or
6. Builds up the health of the entire body.

(*b*) That the ingestion of Lewellyn's Pure Wheat Germ fortifies food in essential vitamins and mineral salts.

(*c*) That Lewellyn's Pure Wheat Germ contains ingredients or elements that:

1. Are beneficial in loss of appetite, loss in weight, constipation, and nervous disorders;
2. Are essential for well-being at all ages and especially for preventing the appearance of premature old age;
3. Protect the body against bacteria infections;

4. Stimulate growth;
5. Are essential to successful reproduction; or
6. Govern the function of the reproductive organs.

(*d*) That Vitamin E, one of the properties of Lewellyn's Pure Wheat Germ, is the rarest vitamin known to science.

(*e*) That Lewellyn's Pure Wheat Germ:

1. Is one of the richest natural sources of Vitamins B and E; or
2. Is an excellent source of Vitamins A and G.

(*f*) That nature has concentrated Vitamins A, B, E, and G in the very heart or germ portion of the wheat kernel. (July 24, 1939.)

02411. **Skin Ointment and Soap—Qualities.**—E. T. Browne Drug Co., Inc., a corporation, 127 Water St., New York, N. Y., vendor-advertiser, was engaged in selling a skin ointment designated Palmer's Skin Success Ointment and a skin soap designated Palmer's Skin Success Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That users of Palmer's Skin Success Ointment can be "confident" of receiving beneficial results or that beneficial effects will result from its use in all cases.

(*b*) That Palmer's Skin Success Ointment is beneficial in the treatment of the condition known as blackheads.

(*c*) That Palmer's Skin Success Ointment is efficacious in the treatment of skin irritations or scalp irritations unless limited to palliative relief.

(*d*) That Palmer's Skin Success Ointment is efficacious in the treatment of the condition known as "the itch" and of itching from all causes.

(*e*) That Palmer's Skin Success Ointment is beneficial as a treatment for "bumps" or "blotches" on the skin.

(*f*) That Palmer's Skin Success Ointment is beneficial as a treatment for sunburn or any similar condition.

(*g*) That Palmer's Skin Success Soap will completely remove or eliminate blackheads.

(*h*) That the use of Palmer's Skin Success Soap will protect the skin.

(*i*) That the use of Palmer's Skin Success Soap will prevent the occurrence of conditions resulting from climatic exposures or from the use of cosmetics. (July 24, 1939.)

02412. **Rat Poison—Qualities, Safety and Earnings or Profits.**—Robert Quirk, trading as The Ohio Products Co., North Madison, Ohio, vendor-advertiser, was engaged in selling a rat poison designated "Quick-Death" and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(*a*) That "Quick Death" is nationally known or that the active ingredient thereof, to wit: red squill is a new or original ingredient for rat poison.

(*b*) That it is nonpoisonous or that it is absolutely harmless under all circumstances to pets, stock, poultry, other animals and human beings.

(*c*) That it is 100 percent effective in the destruction of rodents.

(*d*) That all rodents who eat his commodity "Quick-Death," will go outside the building to die.

(*e*) That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by its active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances. (July 25, 1939.)

02413. **Men's Clothing—Composition.**—P. H. Davis Tailoring Co., a corporation, 2314 Iowa Ave., Cincinnati, Ohio, vendor-advertiser, was engaged in selling men's clothing, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Designating, describing or representing as "wool," "woolen," "pure wool" or "worsted" the fabrics used in the manufacture of its clothing when such fabrics are not wholly composed of wool; and

(*b*) Designating, describing or representing as "wool," "woolen," "pure wool" or "worsted" any fabric made partly of wool and partly of cotton silk, rayon, linen, or other fiber, unless the same is designated, described, or represented as "wool and cotton," "wool and silk," "wool and rayon," etc. in the order of the predominating fiber content.

(*c*) Designating or representing the fabric used in its garments as containing silk either alone or in combination with other materials as a decoration or otherwise, when said decoration or thread is not silk but some thread other than silk. (July 27, 1939.)

02414. **Bread—Composition and Qualities.**—Rhea's Inc., a corporation, 441 Market St., Pittsburgh, Pa., vendor-advertiser, was engaged in selling bread designated Manna Miracle Health Bread and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Manna Miracle Health Bread:

1. Contains all the necessary minerals required in the dietary; or
2. Provides for a balanced diet; or
3. Is nonheating; or
4. Is nonfattening, without qualification, and irrespective of whether or not it is taken in excess of caloric requirements or used in connection with a diet exceeding caloric requirements; or
5. Contains no fat; or
6. Is of value in cases of constipation or conditions of improper elimination irrespective of cause and without expressly restricting its value to such cases of constipation or improper eliminative conditions for which its use might properly be indicated.
7. Regardless of how qualified, that said product acts as a perfect regulator or relieves chronic constipation, or removes coatings of waste poisons in the intestinal tract or helps regulate the system or provides perfect elimination, or cures sluggishness and constipation; or
8. Will completely or in all cases remove the desire for starches and sweets; or
9. Will, whether used in conjunction with a reducing diet or otherwise, enable persons to reduce any definite number of pounds within any definite time.

10. Either in the caption of advertising matter or in any other manner, that said product is of any value in cases of obesity or that users have achieved weight reduction by its use, unless it is stated in direct connection therewith and with equal conspicuousness, that it is merely an aid in the reduction of excess weight if and when used in conjunction with and as part of a proper or effective reducing diet; or
11. Will correct any faulty diet; or
12. Is a vitalizer or normalizer; or
13. Will be of value in cases of high blood pressure; or
14. Will be of value in gall bladder "conditions"; or
15. Will normalize or tone the system; or
16. Will obviate the necessity of laxatives; or
17. Is a competent treatment in the reduction of excess weight caused by an underactive thyroid; or
18. Is a health building food or is a "magic" aid in promoting good health.
19. Will, without qualification, maintain sound health or improve general health or rebuild health.

(*b*) That vitamin A, or that Manna Miracle Health Bread through its vitamin A content, will increase resistance to infection without qualification and irrespective of whether or not the ingestion of vitamin A is already adequate and the body reserve of this vitamin is being maintained.

(*c*) That vitamin A, or that Manna Miracle Health Bread, because of its vitamin A content, or otherwise, maintains normal glandular function.

(*d*) That vitamin E, or that Manna Miracle Health Bread by reason of its vitamin E content, furnishes nutrition to the muscles or promotes weight gain, or enhances physical and mental well being.

(*e*) That vitamin G, or that Manna Miracle Health Bread by reason of its vitamin G content, or otherwise, will prolong life or prevent skin diseases.

(*f*) That vitamin B, or that Manna Miracle Health Bread by reason of its vitamin B content, or otherwise, aids in building nerve tissue or in promoting digestion.

(*g*) That vitamin B, or that Manna Miracle Health Bread by reason of its vitamin B content, or otherwise, is of value for anorexia, unless its value in this respect is expressly limited to cases of anorexia of dietary origin due to insufficient vitamin B.

(*h*) That Manna Miracle Health Bread contains the most costly ingredients ever used in bread baking, or is the original and only bread containing all essential vitamins, or is the only bread that is of value in reducing, or is the only bread product that may aid elimination, or that may aid in correcting faulty diets.

(*i*) That Manna Miracle Health Bread is of value in skin and complexion conditions, unless in direct connection with such statements, and with equal conspicuousness, it is stated that any value in this respect is confined to cases of skin and complexion faults due to or associated with such improper eliminative conditions as would be benefited by said product. (July 31, 1939.)

02415. **Cosmetic—Qualities and Domestic Product as Foreign.**—Vadsco Sales Corp. and Delettrez, Inc., corporations, 21-09 Borden Ave., Long Island City, N. Y., vendor-advertisers, were engaged in selling a cosmetic designated Delettrez Cleansing Cream and agreed, in

connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Delettrez Cleansing Cream penetrates to or has a cleansing effect upon skin below the surface layer, or that it penetrates to the depths of the pores.

(*b*) That Delettrez Cleansing Cream in any way or to any extent vitalizes the skin or brings new life or a younger complexion to the skin.

(*c*) That Delettrez Cleansing Cream differs materially from other creams used for the same and similar purposes.

(*d*) That Delettrez Cleansing Cream has any influence upon the action or condition of glands in the skin or upon the size of the pores.

(*e*) That pores in the skin have any appreciable depth or are capable of holding any material amount of foreign substance, or that they breathe.

It is also agreed by the said Vadsco Sales Corp. and the said Delettrez, Inc., that they will forthwith cease and desist from:

Using the word "Paris" or any other word or words indicating French origin on the labels, cartons, or containers, or in advertising for their products, when such products are manufactured, compounded, or packaged in the United States. (July 17, 1939.)

02416. **Shoes and Clothing—History, Size, Guarantee, Nature of Manufacture, Limited Offer, Qualities, Free Product, Earnings, Etc.**—Louis Shapiro and Wm. J. Mishel, copartners, operating under the firm name of Tanners Shoe Co., 493 C St., Boston, Mass., vendor-advertisers, were engaged in selling shoes and clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the firm is the oldest of its kind in the United States or that it is the largest of its kind in the entire field or that it is the world's largest organization of its kind.

(*b*) That the bond is a "gold" bond or that it guarantees absolute satisfaction or from otherwise representing or implying that it provides for any contingency when such provision is not contained therein.

(*c*) That no shoe store in the world can place before a customer the range of styles, sizes, and widths that the advertisers or any of their agents can offer.

(*d*) That the arch feature can be had through no other medium than through the advertisers' shoes.

(*e*) That their representatives are bonded to the advertisers or their customers.

(*f*) That everything that goes into the shoes has been thoroughly inspected by a member of the firm.

(*g*) That the wearing of their shoes will keep normal feet healthy.

(*h*) That a feature of the shoes is "hand lasting" or that the shoes are handlasted, unless such parts as are handlasted are indicated in direct connection therewith in an equally conspicuous manner.

(*i*) That any offer is limited unless a definite limit is set and all offers to purchase under the terms thereof received after the expiration are refused.

(*j*) That everyone is, or can be, a winner in any contest sponsored by them unless and until such is actually a fact.

(*k*) That the shoes afford greater comfort than anyone has ever known.

(*l*) That a person does not have to send or procure orders to receive the sample outfit unless said outfit is transmitted without the procuring and sending of a single order.

(*m*) That a person will make any definite number of sales within a definite period of time.

(*n*) That the bonding company will take action against any of their agents who do not return the sample outfit.

The said Louis Shapiro and Wm. J. Mishel further agreed to cease and desist from representing by use of the words "Direct to Consumer" or in any manner that they are the manufacturers of any of the products.

The said Louis Shapiro and Wm. J. Mishel further agreed to cease and desist from:

Using the term "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing the advertisers' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the aforesaid terms or any other terms of similar import or meaning and there is no deception as to the price and quality, character, or any other feature of such merchandise, or as to the services to be performed in connection with obtaining such merchandise.

The said Louis Shapiro and Wm. J. Mishel further agreed to cease and desist from representing, directly or by implication:

1 That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have heretofore been consistently made in like periods of time by its active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

2 By the use of such words as "up to," "as high as," or any words or terms of like import that prospective agents, salesmen, distributors, dealers, or other representatives can make earnings or profits within any specified period of time of any amounts which are in excess of the net average earnings or profits within like periods of time made by a substantial number of its active full-time agents. salesmen, distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(3) Any amount as being the actual earnings or profits of any specified agent, salesman, distributor, dealer, or other representative earned in the ordinary and usual course of business and under normal conditions, when such amount was not actually net earnings or profits, or was not made in the ordinary course of business and under normal conditions and circumstances.

(4) That the minimum amounts which prospective agents, salesmen, distributors, dealers, or other representatives can make in profits or earnings within any specified period of time is an amount in excess of the minimum amount earned in like periods of time by all of its active full-time agents,

salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The said Louis Shapiro and Wm. J. Mishel further agreed that in their future advertising, where a word or phrase is used in connection with a specific claim or representation of earnings or profits by way of qualification or limitation, such word, words, or phrases will be made equally as clear and plain as the specific claim or claims which they purport to limit or qualify.

The said Louis Shapiro and Wm. J. Mishel further agreed that in computing the period of time during which specified earnings or profits were made they will include all of the time actually used for demonstrations, solicitations, and any other services performed in connection with either the sale, delivery, or collection of the purchase price by the particular agent, salesman, distributor, dealer, or other representative who is alleged to have made such earnings or profits. (Aug. 3, 1939.)

02417. **Medicinal Preparation—Competitive Products, Qualities, Etc.**—Gore Products, Inc., a corporation, 823 Perdido St., New Orleans, La., vendor-advertiser, was engaged in selling a medicinal preparation for the treatment of Athlete's foot designated H F and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That other preparations or treatments are not beneficial in the treatment of the condition or disease known as Athlete's Foot, or will not contact or reach the parasites causing this disease.

(*b*) That its product H F is a remedy, a complete treatment or cure for this condition or disease.

(*c*) That the use of H F will:

1. "Rid" or keep a person "rid" of this disease or condition.
2. Cause any part of the body to become well or healed.
3. Eradicate the germ or germs or parasites causing this disease or condition, or
4. Kill all the germs or parasites.

(*d*) That the use of H F will cause the itching accompanying this disease or condition to stop or cease and that it will eliminate the desire to scratch.

(*e*) That its product H F is world renowned or is the world's most famous Athlete's Foot medicine.

(*f*) That it has spent more money for advertising in a given time than any other vendor of Athlete's Foot medicine.

Gore Products, Inc., further agreed to forthwith cease and desist from representing directly or by implication by means of pictorial representations that its product H F will cause any part of the body to become well, healed, or cured. (Aug. 3, 1939.)

02418. **Men's Clothing—Composition and Source or Origin.**—J. B. Simpson, Inc., a corporation, 831 West Adams St., Chicago, Ill., vendor-advertiser, was engaged in selling men's clothing and agreed,

in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Designating, describing, labeling or representing as "Wool," "All Wool," "Woolen," "Virgin Wool," " 100% Virgin Wool," "Australian Wool," "Worsted," or "All Pure Wool Worsted," the principal fabrics used in the manufacture of its clothing when such fabrics are not composed wholly of wool.

(*b*) Designating, describing, labeling or representing as "Wool," "All Wool," "Woolen," "Virgin Wool," "100% Virgin Wool," "Australian Wool," "Worsted," or "All Pure Worsted," the principal fabric used in the manufacture of its clothing which is composed partly of wool and partly of cotton, silk, rayon, linen, or any other fiber, unless the same is designated, described, labeled or represented as "Wool and Cotton," "Wool and Rayon," "Wool and Linen," etc., or words of similar import in the order of the predominating fiber.

(*c*) Designating, describing, labeling or representing as "Mohair and Alpaca" the principal fabrics used in the manufacture of its garments, when said fabrics contain domestic wool or other fibers than those indicated.

(*d*) Designating, describing, labeling or representing as "Natural Camel's Hair," the principal fabric used in the manufacture of its garments which fabric contains wool or fiber other than camel's hairs.

(*e*) Making any incorrect statement as to the fiber content of its product. (Aug. 11, 1939.)

02419. **Medicinal Preparation and Booklet—Qualities and Nature of Product.**—M. W. France, an individual, doing business under the trade name, The France System, 1424 North Occidental Blvd., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated San-Sur and a booklet designated The France System and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That San-Sur:

1. Enables ladies to avoid delay.
2. Is sure, certain or positive in its results; or
3. Is a "marvelous" or "new" discovery for feminine hygiene.
4. Is a contraceptive.

Respondent further agreed, in promoting the sale of his product, to cease and desist from the use of the word "San-Sur," or any similar word to designate the name of the product.

(*b*) That the booklet entitled "The France System":

1. Rebuilds sex strength for men and women;
2. Produces more pep;
3. Develops sex health and vigor;
4. Gives health and vigor to the reproductive organs;
5. Strengthens the organs of reproduction;
6. Renews sex forces;
7. Builds sex forces;
8. Increases sex forces;
9. Conserves sex forces or
10. Increases sex vitality.

(*c*) That the booklet entitled "The France System" is a "prescription." (Aug. 15, 1939.)

02420. **Medicinal Preparation—Nature of Product, Qualities, Composition and Testimonials.**—R. W. Harris, an individual doing business as The Ane Co., P. O. Box 94, Walbrook Station, Baltimore, Md., vendor-advertiser, was engaged in selling a medicinal preparation designated Ane Herb Tonic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Ane Herb Tonic:
1. Is a tonic;
2. Is an herb tonic;
3. Is a prescription;
4. Is an herb, root and bark compound;
5. Is of botanical origin; or
6. Is a splendid medicine for the entire family.

(*b*) That Ane Herb Tonic:
1. Will help bring relief from some annoying, or perhaps serious ailment; or
2. Contains several of the finest ingredients known to medical science.

(*c*) That Ane Herb Tonic is a competent remedy in the treatment of rundown and weakened condition, sore, and stiff muscles and joints, faulty elimination, constipation (unless limited to temporary constipation), acid indigestion, dizziness, jitteryness, sleepless nights, indigestion, headaches, poor sleep, dizzy spells, so-called rheumatic pains.

(*d*) That Ane Herb Tonic:
1. Will help ailing, suffering people back to the highway of good health;
2. Will help keep children in good health;
3. Will help mothers in maintaining and restoring health; or
4. Has helped scores of people when medicines failed.

(*e*) That Ane Herb Tonic:
1. Is not just an ordinary medicine;
2. Is as different from ordinary medicines as day is from night;
3. Renders valuable aid to suffering people;
4. Goes to the root of the trouble and helps remove the cause;
5. Helps create renewed health;
6. Always brings satisfactory results;
7. Can be depended upon to help one find the way back to health;
8. Will keep health to a high standard; or
9. Will go to the root of any disease condition and help remove the cause.

The said R. W. Harris further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 16, 1939.)

02421. **Cosmetics—Nature of Product, Qualities and Composition.**—Mme. Huntingford, Inc., a corporation, 600 South Michigan Ave., Chicago, Ill., vendor-advertiser, was engaged in selling cosmetics designated Hair Treatment, Hot Oil Treatment, Scalp Food, Nourishing Oil, Special Treatment Cream, Suave Cleanser, Cleansing Cream, Combination Cream, Cream Emollient, Bleach Emollient,

Soap Emollient and Indian Oil Astringent and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any of the products is a scalp "food" or "nourishing" oil, or that they contain such ingredients.

(*b*) That any of the products or any combination thereof is a corrective for or a preventive of dryness, excessive oiliness, gray hair, baldness, loss of hair, thin or lifeless hair, dandruff, sagging or double chin, wrinkles, blemishes, or other facial or scalp "ills," or that they will cause the hair or scalp to regain normal health.

(*c*) That the use of any of the products or any combination thereof will cause a "luxuriant growth" or a "luxuriant head" or a "new growth" of hair, or from otherwise representing or implying that any of the products or any combination thereof will grow or promote the growth of hair or enable one to have hair of a natural color or to keep the "youthful charm" of hair.

(*d*) That any of the products or any combination thereof will "bring back" a youthful contour of the face, or from otherwise representing or implying that a former facial contour will be restored by their use.

(*e*) That any of the products or any combination thereof will "restore" or "bring back" hair color.

(*f*) That the Hot Oil Treatment is a necessity in the care of the hair or that it "physics" the pores or causes them to absorb any of the preparation or to "throw off" poisons or impurities.

(*g*) That Special Treatment Cream "reconditions" the skin or that it is penetrating or "smooths away" lines or wrinkles, or from otherwise representing or implying that it is a competent treatment or an effective remedy for or a preventive of such conditions.

(*h*) That Special Treatment Cream contains the elements that compose the third layer of the skin or that it is automatic in action.

(*i*) That Sauve Cleanser "penetrates" or "flushes" the pores, eradicates blackheads, or that it has "deep-pore" action.

(*j*) That the Cleansing Cream can be "nibbled into" the skin, or from otherwise representing or implying that it penetrates the skin.

(*k*) That Combination Cream is a "deep-pore" preparation.

(*l*) That Cream Emollient contains "replenishing" oils, or that it will bring "youth" to the skin or impart "youthful vibrancy" or that it is a "reconditioning" cream.

(*m*) That the preparation heretofore designated Bleach Emollient will "lighten" or "bleach" the skin or that it will return to the skin the normalcy of youthful coloring.

(*n*) That Soap Emollient "replenishes" the skin with youthful oils.

(*o*) That the preparation heretofore designated Indian Oil Astringent contains "Indian" oils.

The said Mme. Huntingford, Inc., further agreed not to use the word "bleach," or any other word of similar import or meaning, as a part of the trade name for the product heretofore designated Bleach Emollient.

The said Mme. Huntingford, Inc., further agreed not to use the word "Indian," or any other word of similar import or meaning, as a part of the trade name for the product heretofore designated Indian Oil Astringent. (Aug. 21, 1939.)

02422. **Electric Fence Equipment—Qualities and Nature of Product.**—A. G. Olscheske and R. B. McDowell, copartners doing business as Ideal Manufacturing Co., West Allis, Wis., vendor-advertiser, was engaged in selling electric fence equipment designated Ideal Electric Fence Controllers, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any one can make a saving of 80 percent or any other definite amount by the use of an Ideal Electric Fence Controller, irrespective of the amount of fencing required.

(*b*) That the use of their Ideal Electric Fence Controllers relieves the anxiety concerning the escape of livestock or eliminates fencing problems.

(*c*) That the use of an Ideal Electric Fence Controller with a single wire enclosure confines all livestock or any animal of such a size which would enable that animal to readily pass under or over that wire without coming in contact with it, or any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire.

(*d*) That the use of Ideal Electric Fence Controllers is a positive, certain or sure method to confine livestock.

(*e*) That any fence equipped with an Ideal Electric Fence Controller is more effective to confine livestock than any ordinary fence not so equipped. (Aug. 29, 1939.)

02423. **Soap—Safety, Nature of Product, Qualities, Etc.**—The Procter & Gamble Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a soap designated Chipso and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Chipso is safer for the hands than all other laundry soaps or, without justifiable qualification, is as safe for the hands as toilet soap.

(*b*) That the detergent action of Chipso is substantially different from that of all other soaps, or that it is the only soap producing "shampoo" action or employing a "suction" principle, or that either of such actions is new.

(*c*) That Chipso is unqualifiedly safe for all materials; that it will never weaken threads, or that it in and of itself protects the clothes from washtub wear and tear.

(*d*) That laboratory tests establish that Chipso is superior to every other packaged soap for restoring whiteness to clothing.

(*e*) That Chipso is made especially for any particular locality when such is not the fact. (Sept. 1, 1939.)

02424. **Cigar Lighter—Quality, Earnings, Profits and Opportunities.**—Mid-West Map Co., a corporation, Aurora, Mo., vendor-advertiser, was engaged in selling a cigar lighter and advertisement display device designated Lite-O-Phone and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the Lite-O-Phone is "absolutely" trouble free.

(*b*) That the Lite-O-Phone is the first perfect cigar lighter.

(*c*) That agents or salespersons selling Lite-O-Phones earn $100.00 a week and more, every week and every month, or any other sum in excess of the average amount consistently made by a substantial number of its agents or salespersons under normal conditions in the due course of business.

(*d*) That its agents and salespersons are "guaranteed" earnings of $100 a week or any other sum.

(*e*) That its agents and salespersons earn a profit of 300% to 400%, or any other specified percentage, unless said profits are consistently made by a substantial number of its agents or salespersons under normal conditions in the due course of business.

(*f*) That its agents and salespersons obtain repeat business from year to year with no additional investment.

(*g*) That there is an unlimited field and great demand for its product.

(*h*) That it offers agents and salespersons a money maker without equal.

(*i*) That its product is 100% salable.

(*j*) That its product will put its sales message before five hundred customers per day in each establishment where displayed, or any other number of prospective customers not definitely established by competent evidence.

(*k*) That its agents or salespersons clear $20.00 to $60.00 on each lighter or sell individual advertisements at from $12.00 to $15.00 each, or any other sums, not definitely established by competent evidence.

(*l*) That prospective agents or salespersons without previous selling experience cannot fail selling its product.

(*m*) That prospective agents or salespersons may earn $10,000 a year or any other sum not previously earned by any of its agents or salespersons. (Sept. 1, 1939.)

02425. **Correspondence Course—Opportunities and Earnings or Profit.**—Wallace Luchs, Sr., Sylvan J. Luchs, and Ernestine F. Luchs, a copartnership, doing business under the trade name Washington School of Art, Inc., 1115 Fifteenth St., N. W., Washington, D. C., vendor-advertisers, were engaged in selling a correspondence course and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the field of Art offers new opportunities to trained men and women, unless the word "opportunities" is modified by the word "commercial."

(*b*) That the person reading advertising sellers' advertisements or purchasing their course of instruction has hidden talent.

(*c*) That one may begin a career as an artist by the payment of $3.00.

(*d*) That the person reading advertising sellers' advertisements and purchasing their course of instruction has the ability to make a career in art.

(*e*) That there is any definite number of department stores or lithographers or photoengravers who use Commercial Art, unless and until such number of users is actually shown by authentic statistics.

(*f*) That ability is a matter of training.

(*g*) That persons taking advertising sellers' course of instruction in Commercial Art can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by their active graduates in the ordinary and usual course of employment and under normal conditions and circumstances.

The said Wallace Luchs, Sr., Sylvan J. Luchs, and Ernestine F. Luchs, further agreed that in their future advertising, where a word or phrase is used in connection with a specific claim or representation of earnings or profits by way of qualification or limitation, such word, words, or phrases will be made equally as clear and plain as the specific claim or claims which they purport to limit or qualify. (Sept. 2, 1939.)

02426. **Radio Equipment—Nature of Product and Qualities.**—A. A. Haines and Amalia G. Haines, copartners, doing business under the trade names of V. & R. Manufacturing Co. and V. & R. Electro Mfg. Co., Detroit Lakes, Minn., vendor-advertisers, were engaged in selling aerial eliminators designated V. & R. Aerial Eliminators and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the V. & R. Aerial Eliminator:

1. Is a "new" device, or materially different from other similar devices now on the market;
2. Is equivalent to a 75-foot aerial in 4-inch attachment;
3. Is guaranteed to make outside aerials unnecessary;
4. Will give international or all wave reception;
5. Is a "Hi-Capacity" device;

(*b*) That the V. & R. Aerial Eliminator produces better tone, improved volume or sharper selectivity;

(*c*) That the V. & R. Aerial Eliminator helps reduce static. (Sept. 8, 1939.)

02427. **Men's Clothing—Composition.**—Herbert A. Strong Tailoring Co., a corporation, 2226 West Wabansia Ave., Chicago, Ill., vendor-advertiser, was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Designating, describing, labeling or representing as "wool," "all wool," or "woolen" the principal fabrics used in the manufacture of its clothing when not all of such fabrics are composed wholly of wool;

(*b*) Designating, describing, labeling, or representing as "wool," "all wool," or "woolen" the principal fabrics used in the manufacture of its clothing which is made partly of wool and partly of cotton, silk, rayon, linen, or any other fiber, unless the same is designated, described, labeled or represented as "wool and cotton," "wool and silk," "wool and rayon," "wool and linen," etc., in the order of the predominating fiber content;

(*c*) Designating, describing, labeling, or representing that any fiber or fibers contained in the fabrics used in the manufacture of its clothing are silk, when in truth and in fact said fiber or fibers are rayon or a fiber or fibers other than silk. (Sept. 11, 1939.)

02428. **Medicinal Preparation—Qualities and Special Price.**—W. C. Ohlendorf, an individual trading and doing business as Dr. Ohlendorf, 1924 Blue Island Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Ohlen-

dorf's Tonic and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dr. Ohlendorf's Tonic is a competent treatment for the relief of weak, nervous, run-down conditions, sluggish kidneys, irritated bladder, weak nerves, backache, rheumatism, neuritis, diabetes, catarrh of bladder and bowels, burning and frequently scanty urination due to anemia, and poor blood circulation;

(*b*) That Dr. Ohlendorf's Tonic will tone up the kidneys, bladder and nerves, relieve rheumatism, neuritis, backache and frequent urination;

(*c*) That Dr. Ohlendorf's Tonic is a diuretic to kidneys;

(*d*) That Dr. Ohlendorf's Tonic will in all conditions enrich the blood, and increase its circulation;

(*e*) That the price charged for the product is a special price. (Sept. 12, 1939.)

02429. **Medicinal Preparation—Qualities.**—C. Raymond Powell, an individual trading as Raymond Powell Co., Dermon Building, Memphis, Tenn., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated Blue Star Ointment on behalf of Jim Bourland, an individual trading as Star Products Co. and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) By the use of such terms as "Stop Skin Itch," "Puts Stop to Itching," "Put a stop to itching torture," or otherwise that the effect of "Blue Star Ointment" in relieving the itching due to eczema, rash, tetter, ringworm, pimples, scabies, between toes, or other similar superficial conditions of the skin, is permanent.

(*b*) By the use of such terms as "extra effective," "strikingly effective" or otherwise that the effect of "Blue Star Ointment" or of the medicines contained in it, in relieving the itching or the itching torture due to eczema, rash, tetter, ringworm, pimples, scabies, between toes, or other similar superficial conditions of the skin, is extraordinary or unusual.

(*c*) That "Blue Star Ointment" soothes rawness, or that it is soothing when applied to raw surfaces of the skin. (Sept. 12, 1939.)

02430. **Books—Nature of Product, Qualities and Free Product.**—M. Fryfield, an individual trading as The National Library Press, 110 West 42nd St., New York City, vendor-advertiser, was engaged in selling books designated How to Draw from the Nude and Making Art Pay and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said book "How to Draw From the Nude" teaches art as it is taught in studios; will take the place of a studio; will give one a studio at home or professional instruction; enables one to study as in classes with personal instruction; is the most thorough or comprehensive book on art instruction published; that the pictorial illustrations in said book are actual photographs;

(*b*) That said book "Making Art Pay" is free or given to purchasers of "How to Draw From the Nude" without charge. (Sept. 14, 1939.)

02431. **Massage Cream—Qualities.**—Mme. Nell E. Anderson, 1415 Echo Park Ave., Los Angeles, Calif., vendor-advertiser, was engaged in selling a bust developing cream designated Mme. Anderson's Bust Developing Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That massaging with her commodity, Mme. Anderson's Bust Developing Cream in conjunction with a prescribed exercise of the bodily muscles or in any other manner or at all will enlarge the female bust of a human being by causing the breasts to become large and firm. (Sept. 14, 1939.)

02432. **Medicinal Preparation—Qualities, Nature of Manufacture and "Pharmacal."**—F. G. Neuhaus, an individual trading and doing business as Neuhaus Pharmacal Co., 824 South Kingsley Drive, Los Angeles, Calif, vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Custodis Oil of Garlic Capsules and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Will have an inhibiting effect on the production of or elimination of intestinal toxins.

(*b*) Will bring about a reduction in hypertension or high blood pressure except when reference is made to a temporary reduction, not to exceed several hours, of hypertension due to muscular constriction of blood vessels.

(*c*) Will modify the intestinal flora or bring about a correction of gastro-intestinal disorders.

(*d*) Will be of value in the relief or treatment of headaches, thoracic oppression, dizziness or anorexia in any case other than where a temporary reduction of high blood pressure due to muscular constriction might be of value in giving temporary relief from such symptoms.

(*e*) Is of value in the treatment of arthritis, neuritis or gall bladder infections.

(*f*) Will remove the cause of any ailment.

(*g*) Is prepared by a process which imparts superior virtues to said product or that tests have indicated that said product is superior to other preparations dependent upon garlic as the active ingredient.

(*h*) By the use of the word "pharmacal" in his trade name or otherwise, that he prepares said product or maintains a pharmacy or pharmacal facilities, or that he maintains a laboratory wherein tests have been made indicting the efficacy of said product. (Sept. 15, 1939.)

02433. **Hosiery—"Direct to You," Manufacturer and Wholesale Prices.**—H. F. Goring, an individual trading as The Direct Co., and Directo, 221 Broad St., Savannah, Ga., vendor-advertiser, was engaged in the direct selling of Hosiery and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

From the use of the trade names "The Direct Company" and "Directo," and from use of the words "Direct from mill" or any other words or phrases of like import so as to represent thereby, directly or by implication, that the

merchandise which he sells is shipped direct to customers from a mill or factory or that he owns, operates, or controls the mill or factory in which said merchandise is manufactured.

From representing, by the use of words and phrases such as "Wholesale to You" and "Wholesale direct to you," or in any other manner, that the price at which his product is offered to the general purchasing public is a wholesale price. (Sept. 18, 1939.)

02434. **Soap—Composition, Qualities, and Comparative Merits.**—The Procter & Gamble Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a soap designated P and G The White Naphtha Soap and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(*a*) That P and G The White Naphtha Soap contains a unique ingredient which makes it the only soap which will remove stubborn "deep down" dirt from clothes.

(*b*) That P and G The White Naphtha Soap is kind to all sorts of fabrics and colors, or that it never fades colors, unless directly limited in context to reference to colors which are washable.

(*c*) That the use of P and G The White Naphtha Soap enables one to cut washing time, or that it loosens dirt faster or washes clothes whiter, or any other statement purporting to express a comparison, unless the basis of the comparison is stated in direct connection therewith. (Sept. 19, 1939.)

02435. **Medicinal Remedy and Stain Remover—Comparative Merits and Qualities.**—The John Puhl Products Co., a corporation, 3640 Pershing Road, Chicago, Ill., vendor-advertiser, was engaged in selling a solution to be used as a stain remover and also for a medicinal preparation designated Fleecy White and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any mixture of Fleecy White and water is the equivalent in chlorine concentration to Dakin's Solution.

(*b*) That Fleecy White is a competent remedy in the treatment of poison ivy, poison oak, sumac, insect bites, or minor burns, unless limited to cases in which secondary infection has supervened.

(*c*) That said preparation is a competent remedy in the treatment of Athlete's Foot or Barber's Itch.

(*d*) That said preparation will destroy the fungus that causes Athlete's Foot.

(*e*) That said preparation is a competent remedy for sores of all types or for cuts or scratches, unless limited to such benefits as may result from its use as a germicide or antiseptic dressing. (Sept. 19, 1939.)

02436. **Gelatine—Government Standard.**—Charles B. Knox Gelatine Co., Inc., a corporation Johnstown, N. Y., vendor-advertiser, was engaged in selling gelatine designated Knox Gelatine and agreed, in connection with the dessemination of future advertising, to cease and desist from representing directly or by implication:

That the United States Government has created a standard of purity for gelatine. (Sept. 19, 1939.)

02438.[1] **Cosmetics—Nature of Product, Qualities, and Competitive Products.**—Luxor, Ltd., a corporation, 1355 West 31st St., Chicago, Ill., vendor-advertiser, was engaged in selling cosmetics designated Luxor Special Formula Cream and Luxor Complexion Powder and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That a cosmetic now designated Luxor Special Formula Cream or any other cosmetic containing substantially the same ingredients or possessing the same properties whether sold under this name or any other name:

1. Is a new type of cleansing cream.
2. Is a scientific facial treatment.
3. Will aid the complexion without danger of wax-clogged or wax-sealed pores.
4. Is the product of unlimited research.
5. Contains oils that penetrate deeply into the skin.
6. Results in a beauty magic by a reverse emulsion action.
7. Produces never failing beauty results.
8. Reaches into the pores of the skin.
9. Will cleanse and beautify the skin better than any other cream.

(*b*) That for centuries cold creams and cleansing creams have been made with oils bodied up with waxes, unless qualified to indicate that not all of said creams contained waxes.

(*c*) That wax in cold or cleansing creams may clog or seal the pores.

(*d*) That a cosmetic now designated Luxor Complexion Powder or any other cosmetic containing substantially the same ingredients or possessing the same properties whether sold under this name or any other name:

1. Possesses sensational resistence to moisture that is a real mystery.
2. Affords real beauty protection.

(*e*) That face powders containing moisture-absorbing ingredients are apt to, or may, clog or seal the pores or pore openings of the skin, or form sebaceous plugs. (Sept. 22, 1939.)

02439. **Hosiery, Shirts and Lingerie—Free Selling Plan, Nature of Plan, Limited Offer, Nature of Product, Earnings, Opportunities, "Certified," Composition, Etc.**—H. D. Heyman, an individual, trading and doing business as Certified Silk Hosiery Co., 221 West Washington St., Chicago, Ill., vendor-advertiser, was engaged in advertising for agents to sell and through such agents as well as direct to the consumer, offering for sale, and selling hosiery, shirts, and lingerie designated "Certified Hosiery," "Certified Shirts," and "Certified Lingerie" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any of his selling plans is "Free" so long as any charge is made or deposit required or service is to be rendered therefor.

(*b*) That his products may be tried without cost or risk unless all qualifying conditions of the transaction are stated in direct connection therewith, or that said products may be obtained at wholesalers' cost or that no investment is needed to become an agent for said products.

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[1] Stipulation 02437 not released.

(*c*) That any of respondent's plans enable a person to start a wholesale business without investment or that no canvassing is needed to sell said products.

(*d*) That there is a time limit within which any offer must be accepted or that a time limit has been extended for any individual unless and until a definite time limit is set for a particular offer at the expiration of which the offer is withdrawn.

(*e*) That a new process doubles the wear of respondent's hosiery or that the same are snag-resisting, or that by the use of said products the problem of "runs" in hosiery is eliminated.

(*f*) That the method of designing, the cut or method of construction of any of said products assures a perfect fit.

(*g*) That his supply of selling plans is limited.

(*h*) That by selling said products one may be assured of a steady income or that sales persons or agents will have the chance or opportunity of earning $28.50 a week or any other sum in excess of the average amount consistently made by a substantial number of his agents under normal conditions in the due course of business.

(*i*) That when a person once buys said products the agent is assured of that person's business in the future or that what profit one agent has made may be made by another.

(*j*) That said socks eliminate the need for darning or that said hosiery will give almost double ordinary wear, or that the thread from which any of said products is composed is made by a revolutionary new process.

(*k*) By the use of the word "Certified" in his trade name or otherwise that the quality, cut, design, composition, or any other feature of said products is "Certified" unless and until (1) there is issued a certificate to that effect by a qualified individual familiar with the facts; or (2) an equivalent to the contents of such certificate is clearly set forth on said products, e.g., by the printing, labeling and/or transferring on said products by the producers or manufacturers of said products, a descriptive statement as to the portions of said products containing silk and the portions of said products containing other than silk fabrics.

(*l*) That any of said hosiery, socks, or lingerie are "silk," provided that if the body or boot of said hosiery or socks is composed wholly of silk, the respondent is not hereby inhibited from using the word "silk" to describe said hosiery or socks, provided that the word "silk" is 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 the composition of such portions of said hosiery or socks as are not composed wholly of silk; and provided further that if the word "silk" is used to describe lingerie and it contains material other than silk, it shall be so stated in direct connection therewith and in an equally conspicuous maner as the word "silk" is used, what proportion of the fabric of said garment is silk and the composition of the fabric other than silk.

The respondent further agreed to cease and desist from the use of the word "silk," as a part of his trade name or otherwise, as a brand or designation of any merchandise of said business which is not composed wholly of silk unless such trade name or phrase containing the word "silk" shall be accompanied by a full disclosure of the fabric content of each garment in such a manner as to indicate to all persons

handling or purchasing the same the true fabric content of each garment. (Sept. 25, 1939.)

02440. **Device for Electrifying Stock Fences—Qualities.**—L. D. Leach, an individual, operating under the trade name of LeJay Manufacturing Co., 1406 West Lake St., Minneapolis, Minn., vendor-advertiser, was engaged in selling a device for electrifying stock fences designated LeJay Electric Fence Controller, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That, used in conjunction with the LeJay Electric Fence Controller, one strand of wire will confine animals of varying sizes, or will confine animals as efficiently as a fence of several strands, or that it will enable users to save 80% of livestock fencing costs unless the circumstances of such saving are clearly explained.

(*b*) That a single charged wire can be used successfully in restraining all animals, or by any general terminology that it will restrain animals with a coat of hair which forms a natural insulation against the charge. (Sept. 25, 1939.)

02441. **Grapefruit Juice—Composition and Comparative Merits.**—The Ralph H. Jones Co., a corporation, Carew Tower, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for a beverage designated Kroger's Country Club Brand Grapefruit Juice, on behalf of The Kroger Grocery and Baking Co., Cincinnati, Ohio, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That sugar syrup is usually used in flavoring grapefruit juice or from otherwise representing or implying that Kroger's Country Club Brand Grapefruit Juice is the only grapefruit juice to which dry sugar is added. (Sept. 26, 1939.)

02442. **Grapefruit Juice—Composition and Comparative Merits.**—The Kroger Grocery and Baking Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a beverage designated Kroger's Country Club Brand Grapefruit Juice and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That sugar syrup is usually used in flavoring grapefruit juice or from otherwise representing or implying that its product is the only grapefruit juice to which dry sugar is added.

(*b*) That competing products of equal quality contain a lesser quantity, unless such is an actual fact, or from otherwise making any misleading or disparaging statement regarding competing products or any false comparison therewith. (Sept. 27, 1939.)

02443. **Corn Treatment—Qualities, Results, and Safety.**—Whitney B. Corner, an individual doing business as Corn-Off Co., 3306 Club Drive, Los Angeles, Calif., vendor-advertiser, was engaged in selling a corn treatment designated Corn-Off and agreed, in connection

with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product Corn-Off will "cure" corns or similar formations on the epidermis or cause them to disappear.

(*b*) That the product Corn-Off will produce any results in any period of time or will have any finality of results or that it will produce any results faster than products for similar uses and purposes.

(*c*) That there is no pain or soreness in connection with the use of this product.

(*d*) By stating Corn-Off contains no acid, ether, collodion or any other ingredient or by any other similar representation that the product Corn-off will not cause harm or soreness or has no ingredient which might be harmful. (Sept. 28, 1939.)

02444. **Wheat Flour—Qualities and Comparative Merits.**—Tri-State Milling Co., a corporation, trading as Tri-State Milling Co. and as Rapid River Milling Co., Rapid City, S. Dak., vendor-advertiser, was engaged in selling wheat flour designated Trisco Flour and Swan's Down Flour and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That spring wheat, or Black Hills South Dakota spring wheat, or the flour milled therefrom, have greater strength, a higher protein content, or a higher absorption factor—or that they make better looking or finer textured loaves of bread or more loaves of bread per bag than all winter wheats or all brands of winter wheat flour; or that they are superior in these respects to any other wheat or flour having as high a protein content.

(*b*) That spring wheat possesses features or qualities superior to those of winter wheat or is preferred to winter wheat for the milling of all-purpose flour.

(*c*) That spring wheat is the only type of wheat or that the flour milled therefrom is the only flour with which best baking results may be obtained; or which contains the maximum amounts of protein; or which possesses certain natural characteristics desirable for all-purpose baking.

(*d*) That Swan's Down flour makes more loaves of bread per bag or bakes bread of better texture or appearance than any other brand of flour.

(*e*) That bread baked with Swan's Down flour has a more desirable flavor than bread baked from other brands of spring wheat.

(*f*) That Swan's Down flour contains all of the food elements necessary for health.

(*g*) That bread made with Swan's Down flour or spring wheat flour has greater food value than bread made with winter wheat flour. (Sept. 28, 1939.)

02445. **Books and Pamphlets—Qualities, Results and Guarantee.**—Monte Publishing Co., Inc., a corporation trading as such and as The Library of Systems, 511 Oakland Ave., Baltimore, Md., vendor-advertiser, was engaged in selling books and pamphlets designated "The Double Check System," "The Master Key System," "The Publishers Method," "The One-a-Day System," "The Guaranteed 50% System," "The Winfast Method," "The Easy Money System," "The

Spotlight System," "The Trainer's Long Shot System," "The Pressure Play-Cinch System," "The Arithmometer," "Pittsburgh Phil's Method," "Surety System," "The World's Famous Man O'War Method" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the books or pamphlets or the systems, plans, or methods of betting mentioned in the advertising comprise or contain the world's best turf systems.

(*b*) That any of said books, pamphlets, or any of the said plans, or systems of betting gets many long shots; selects winners of the entire cards, or more horses that win, place or show, than any other method; has produced astounding results, or astounded its followers; has many accomplishments; returns better than 70% or any other percentage of winners; breaks down all barriers; achieves results; overcomes all obstacles; plays only fit horses; cannot be surpassed; will win more money on average per week, or any given period of time, than any other system.

(*c*) That any of the books or pamphlets, or any system of betting mentioned in the advertising, is a certain winner; a powerful plan or all that the name implies; a worth-while method of operation; based on logic; a wonderfully balanced progression or regression plan; designed to, or does, overcome long strings of losses; a safe and sane method; conservative or steadfast; tested or proved; a successful plan; shows a net profit of any percentage or sum over any designated period of time, on any specified amount of capital invested.

(*d*) That by the use of any of said books, pamphlets or systems of betting one's turf investments should, or would, produce a monthly profit or win all he wants; $50 or any specific sum would carry one through his worst runs of losses; profits pile up steadily or consistently, or at all; every play is arrived at properly or by definite calculation; no guesswork or haphazard methods are employed.

(*e*) That the users of any of said books or pamphlets, or the following of any such systems or plans of betting have the habit of success.

(*f*) That any of said books or pamphlets, or any of the methods or plans of betting mentioned in the advertising, is a "guaranteed" method. (Sept. 28, 1939.)

02446. **Nursery Stock—Opportunities, Qualities, Free, Etc.**—Wm. C. Moore & Co., Inc., a corporation, Newark, N. Y., vendor-advertiser, was engaged in selling nursery stock through agents or sales persons and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That all persons, regardless of age, sex, location, education, experience or business qualifications, can succeed as a sales person for respondent.

(*b*) That the free "Salesmanship and Landscape Lessons," given by respondent to its salespersons, imparts a knowledge of landscape work that quickly enables even the most inexperienced men to properly advise home owners in regard to location, planting and ordering of correct trees, shrubs, vines, etc.

(*c*) By the use of the phrase "must be satisfied with $35 weekly at the start," or in any other manner, that it has a vacant position or job consisting of landscape work and handling orders for old and new customers carrying a definite salary or wage of $35 weekly to be paid from the start to the person selected to fill such vacancy, or that it is not in fact seeking the services of

numbers of sales agents or solicitors to sell nursery stock on a commission basis. (Oct. 2, 1939.)

02447. **Medicinal Preparation—Qualities and Ailments.**—Van De Mark Advertising, Inc., a corporation, Times-Star Tower, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated Floradex on behalf of Harold T. Maloney, an individual trading as Floradex Co., Columbus, Ohio and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Floradex is marvelous or new.

(*b*) That constipation is the factor behind most human ills and ailments

(*c*) That Floradex will keep a person from being sick, or restore or build health, or will enable one to gain vim and vigor.

(*d*) That Floradex is a benefit in removing the cause of most common ailments. (Oct. 2, 1939.)

02448. **Olive Oil—"Certified" and Packed by Institute, Composition, Qualities, Etc.**—International Importing Co., Inc., a corporation, 322 Tremont St., Boston, Mass., vendor-advertiser, was engaged in selling olive oil designated Agorole Olive Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Agorole Olive Oil is packed and certified by the Olive Oil Institute of America, or any other "institute" unless said olive oil is actually certified and packed by an "institute" properly so constituted.

(*b*) That Agorole Olive Oil is the only "certified" Greek Virgin Olive Oil; or the only "certified" Virgin Olive Oil in America.

(*c*) That Agorole Olive Oil contains vitamins B, D and E.

(*d*) That refined olive oil contains no vitamins.

(*e*) That Agorole Olive Oil contains any specific medicinal ingredients.

(*f*) That Agorole Olive Oil is a treatment for ulcers of the stomach and gall bladder disorders.

(*g*) That the authorities do not recognize the difference between refined and virgin olive oil. (Oct. 9, 1939.)

02449. **Lace—Nature of Product.**—Joseph Chabbott and Julius Chabbott, copartners operating under the firm name of Chabbott's, 941 F St., N. W., Washington, D. C., vendor-advertiser, was engaged in selling Chinese Fillet Banquet Cloths designated as Tuscany Lace and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any Banquet Cloths or other articles sold by them are Tuscany Lace, unless they are in fact true Tuscany Lace. (Oct. 9, 1939.)

02450. **Medicinal Preparation—Qualities, Etc.**—Charles A. Thayer, an individual trading as Ta-Kay Laboratories, and T-K Laboratories, P. O. Box 534, Topeka, Kans., vendor-advertiser, was engaged in

selling a medicinal preparation designated Ta-Kay and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That a medicinal preparation now designated Ta-Kay, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

(*a*) Is a remedy or effective treatment for eczema, inflammation of the skin not due to minor superficial causes, hickies, itching skin conditions, insect bites, sore hands, pimples, rash, scabies, athlete's foot, hives, shingles, or that it will do more than temporarily relieve the itching irritations and minor pains where due to or associated with superficial skin conditions, or caused by or associated with the various disorders named.

(*b*) Will bring effective, long-lasting relief from itching, burning or pain due to or associated with the skin disorders and conditions hereinbefore named.

(*c*) That doctors use a preparation of the same or similar composition as a treatment for other than external irritant plant poisons, prickly heat, sunburn and the itching irritations and minor pains due to or associated with the various other disorders and skin conditions hereinbefore mentioned. (Oct. 11, 1939.)

02451. **Food Supplements—Qualities and Safety.**—Vita Products, Inc., a corporation, Zeeland, Mich., vendor-advertiser, was engaged in selling food supplements designated Nutrimere and Nepter Kelp and Cod Liver Oil Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Nutrimere supplies any mineral or other substance with the exception of iodine, in therapeutic quantities.

(*b*) That Nepter Kelp and Cod Liver Oil Tablets supply any mineral or other substance except iodine and Vitamin D in therapeutic quantities.

(*c*) That Nutrimere is of any value in the treatment of any condition or disease unless specifically limited to those cases which are due to iodine deficiency, and then only to the extent of supplementing the iodine consumed, or that Nepter Kelp and Cod Liver Oil Tablets will be of any greater value unless specifically limited to such results as may be expected by reason of the Vitamin D content, or that either product constitutes a competent remedy or an effective remedy for arthritis, anemia, goiter, rickets, asthma, constipation, colds, catarrh, hay fever, or high or low blood pressure.

(*d*) That Nutrimere is a weight normalizer.

(*e*) That the average diet in the United States is deficient in any elements which would be supplied by Nutrimere or Nepter Kelp and Cod Liver Oil Tablets.

(*f*) That Nutrimere and Nepter Kelp and Cod Liver Oil Tablets are not drugs or do not contain drugs.

(*g*) That Nutrimere will assure children the proper material "to grow on", or will assure sound teeth.

(*h*) That either Nutrimere or Nepter Kelp and Cod Liver Oil Tablets is a tonic.

(*i*) That said Nutrimere and Nepter Kelp and Cod Liver Oil Tablets promote heart or liver action, good skin, or thyroid health.

(*j*) That said Nutrimere and Nepter Kelp and Cod Liver Oil Tablets, either directly or indirectly, affect the cause of dental decay or pyorrhea.

(*k*) That said Nutrimere and Nepter Kelp and Cod Liver Oil Tablets aid digestion, hasten metabolism, or effect a change of old for new material, improve or normalize elimination, help to build up the alkaline reserve, tone up the system, effect or maintain a proper balance in the blood stream, or keep up one's energy or resistance.

(*l*) That said Nutrimere and Nepter Kelp and Cod Liver Oil Tablets add extra pounds, aid or establish normal body weight or good health, or that their use is a safe way to (correct) one's weight.

(*m*) That one takes no chance of harming himself with said Nutrimere or Nepter Kelp and Cod Liver Oil Tablets, or that they are safe to use.

The said Vita Products, Inc., further agreed that in all future advertising of said products it will publish a conspicuous warning to the effect that said products may be harmful to some individuals and in such cases should be taken only under proper medical supervision. (Oct. 16, 1939.)

02452. **Medicinal Preparations and Cosmetics—Qualities, Composition, Special or Limited Offers, Free, Etc.**—McKesson and Robbins Inc., a corporation, trading as Golden Brown Chemical Co., Bridgeport, Conn., vendor-advertiser, was engaged in selling medicinal preparations and cosmetics designated Golden Brown Hair Dressing, Golden Brown Ointment, Golden Brown Soap, Flowers of Liberia Talc, Golden Brown Lipstick, and Flowers of Liberia Rose Almond Lotion and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any of said preparations "penetrates" or invigorates the hair roots; nourishes the scalp; or "penetrates" the pores.

(*b*) That any of said preparations banishes rash or tetter; or causes blemishes or blotches to disappear.

(*c*) That any of said preparations is good for mother's or baby's skin, tones up the skin, brings a return of health or girlhood glow to the skin; clears the complexion; or defeats perspiration odor.

(*d*) That any of said preparations is scented with or contains ingredients from the flowers of Liberia.

(*e*) That Golden Brown Lipstick is "waterproof."

(*f*) That either the Beauty Culture Course or diploma included in its so-called Special Offers to prospective agents is of any value; or that the advertiser-vendor has any legal authority to issue or award a diploma.

(*g*) That any of said so-called Special Offers is limited to one agent, unless adhered to, that any offer is special which is open to any person who may answer the advertisement and is not limited with respect to time.

(*h*) Using the term "free" or any other term of similar import or meaning to describe or refer to merchandise offered as compensation for distributing this advertiser-vendor's merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the term "free" or any other term of similar import or meaning and there is no deception as to the price, quality, character or any other feature of such merchandise, or as to the services to be performed in connection with obtaining such merchandise.

The said McKesson and Robbins Inc. further agreed to cease and desist from the use of the words "Rose" or "Almond" as a part of the trade name of any of its products unless such product is composed principally of Rose and Almond ingredients. (Oct. 17, 1939.)

02453. **Medicinal Preparation—Use or Standing, Qualities and Testimonials.**—Templetons, Inc., a corporation, 1517 Broadway, Buffalo, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Raz-Mah and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That a medical preparation now designated Raz-Mah, or any other medical preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is sold by all druggists.

(*b*) That sufferers from asthma will be almost instantly relieved from wheezy, difficult breathing by Templetons Raz-Mah Capsules.

(*c*) That sufferers from hay fever will be speedily, quickly or almost instantly relieved from sneezing, itching and excessive watery secretions in the nose and eyes associated with hay fever, by Templetons Raz-Mah Capsules.

(*d*) That coughs due to bronchial irritation or otherwise will be speedily, quickly or almost instantly relieved by Templetons Raz-Mah Capsules.

(*e*) That sufferers from smokers' cough and bronchial irritations are relieved by Templetons Raz-Mah Capsules.

(*f*) That the use of Templetons Raz-Mah Capsules will prevent bronchial irritations from developing into asthma.

The said Templetons, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 17, 1939.)

02454. **Poultry Feeds—Qualities and Comparative Merits.**—The Quaker Oats Co., a corporation, 141 West Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling poultry feeds designated Ful-O-Pep and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the Ful-O-Pep feeding plan "assures" more and better chicks.

(*b*) That Ful-O-Pep mashes or Ful-O-Pep chick starter constitutes the best way of combatting and preventing gizzard lesions.

(*c*) That Ful-O-Pep feeds are the most profitable to use or to sell, or will enable prospective purchasers to secure more eggs or will result in growing more or better chicks, or will produce more big, sound-shelled premium eggs, unless the comparatives are clearly and specifically stated in direct connection with such claims.

(*d*) That Ful-O-Pep feeds will "assure" more and better quality eggs or better poultry. (Oct. 17, 1939.)

02455. **Insecticide—Qualities.**—Midland Chemical Laboratories, Inc., a corporation, Dubuque, Ia., vendor-advertiser, was engaged in selling an insecticide designated Mill-O-Cide and agreed, in connec-

tion with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the insecticide preparation now designated as Mill-O-Cide, or any other insecticide preparation containing substantially the same ingredients or possessing the same properties, whether sold under that or any other name, is effective in the destruction of all insects, eggs and larvae of insects, or in the destruction of any insects, eggs and larvae of insects with which it does not come in contact.

(*b*) That it is a double strength insecticide.

(*c*) That it will prevent or eliminate infestation in foodstuffs and in places where foodstuffs are kept and stored.

(*d*) That it will keep bugs and insects away from foodstuffs and places where foodstuffs are kept and stored. (Oct. 19, 1939.)

02456. **Medicinal Preparation—Qualities, Etc.**—A. C. Morton, an individual doing business under the trade name of Morton Distributing Co., Sedalia, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated Russell's Black Gold Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Is a competent remedy in the treatment of Eczema, Psoriasis, Acne or any other affections of the skin which are due to or based upon a systemic or constitutional background.

(*b*) Is a competent remedy in the treatment of Athlete's Foot or any other affections of the skin resulting from a deep seated invasion of the skin by a group of fungi.

(*c*) "Will take care of practically any of the common run of skin trouble."

(*d*) Draws out impure, poisonous waste matter.

The said A. C. Morton further agreed in promoting the sale of his said product, to publish a warning to his customers that its prolonged, continued use may produce malignant skin irritations. (Nov. 1, 1939.)

02457. **Poultry Remedies, Etc.—Qualities and Results.**—F. R. Glover, an individual, Cortland, N. Y., vendor-advertiser, was engaged in selling poultry remedies, etc., designated Glover's Poultry Tonic, Glover's Conditioning Powder, Glover's Roup Cure (Liquid), Glover's Cholera Cure, Glover's Pox Cure, Glover's Poultry Wormer, Glover's Louse Exterminator, Ratin, a preparation for exterminating rodents, Poultry Diseases, a book, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Glover's Poultry Tonic—

1. Builds up the resistance of a flock so that it will not be liable to disease.
2. Increases the egg yield of a flock three-fold, or in any material amount.
3. Enables one to raise chicks without losing any by disease.

(*b*) That Glover's Conditioning Powder—

1. Is the world's greatest conditioner.

2. Will put every class of stock in the "pink of condition."
3. Will keep down fever in poultry.
4. Will condition cocks to win.

(*c*) That Glover's Roup Cure and Glover's Powdered Roup Cure—
1. Will cure roup, colds, rattles, canker and all kindred diseases of poultry.
2. Are tonics.
3. Serve as preventatives of disease.

(*d*) That Glover's Roup Cure (Liquid)—Keeps the passages of the head and throat of poultry open and heals the delicate membranes.

(*e*) That Glover's Powdered Roup Cure—
1. Drives the poison from the blood of poultry, and
2. Brings about a sure, speedy and complete cure of roup.

(*f*) That Glover's Cholera Cure—
1. Is an effective remedy or competent treatment for cholera or bowel troubles of poultry.
2. Has saved many chickens from dying.
3. Is a "cure" for cholera or bowel troubles of poultry in any stage.
4. Cures ordinary diarrhea and white diarrhea.
5. Will check the worst attack of cholera at once and soon cure it.

(*g*) That Glover's Pox Cure—Is an effective remedy or competent treatment for Favus, Scurvy and all like diseases of poultry.

(*h*) That the powder included in Glover's Pox Cure eliminates the poison from the blood of poultry affected with Pox and the ointment heals the sores.

(*i*) That Glover's Poultry Wormer—
1. Is a sure cure for "all" worm troubles in poultry.
2. Will rid one's flock of worms.

(*j*) That Glover's Gapes Cure is an absolute cure for gapes.

(*k*) That Glover's Louse Exterminator—
1. Will keep fowls free from head and body lice and mites of all kinds.
2. Gets the mites as soon as the nits hatch out.
3. Is "sure" to kill the lice.
4. Will rid one's flock of lice.

(*l*) That Ratin is effective for eliminating mice and rats of all sizes.

(*m*) That his book entitled "Poultry Diseases"—
1. Explains fully the cause of each disease.
2. Gives the symptoms of poultry diseases in such a manner as to enable the layman to readily distinguish one disease from another.
3. Offers the best possible treatment for various poultry diseases.
4. Prescribes the best known remedy for various poultry diseases.

(*n*) That Range Paralysis, Brooder Paralysis and Leg Weakness in poultry come from intestinal poisoning and in many cases from worms.

The said F. R. Glover further agreed to cease and desist from representing through the use of the word "cure" as a trade name or designation for any of his preparations, or through any other means and in any manner that any of his preparations are cures. (Nov. 3, 1939.)

02458. **Book of instructions—Qualities.**—Pioneer Publications, Inc., a corporation, 1270 Sixth Ave., New York City, vendor-advertiser, was engaged in selling a book of instructions on dancing and agreed,

in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That, anyone by reading the information and following the instructions in said book, will be enabled to dance with ease or assurance or will be enabled to become a wonderful dancer or that thereby anyone can, with but a few hours practice, learn to dance. (Nov. 6, 1939.)

02459. **Cough Remedy Formula—Qualities and Source or Origin.**—R. A. Nichols, an individual, 113 York St., Rumford, Me., vendor-advertiser, was engaged in selling a formula for compounding a cough remedy designated Mexican Cough Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the use of a cough remedy, now designated and described as "Mexican Cough Remedy" or any other preparation containing substantially the same ingredients, or possessing the same properties whether the formula is sold under that name or any other name;

(*a*) Will stop, check, or have any effect on the cause, course, or degree of night sweats, or

(*b*) Will purify the blood or relieve coughs not due to or associated with colds, or do more than temporarily relieve the irritation of the mucosa it may reach and lave, or

(*c*) Supply energy for the human body.

It is further agreed that the said R. A. Nichols will cease and desist from designating, or describing the formula he offers for sale, or the syrup composed according to such formula as "Mexican" by using the term "Mexican," or any other word or term that simulates "Mexican" by spelling or sound. (Nov. 3, 1939.)

02460. **Cosmetic Preparations—Qualities, Composition, Special or Introductory Prices, Etc.**—Bar-Je, Inc., a corporation, 540 North Michigan Ave., Chicago, Ill., vendor-advertiser, was engaged in selling numerous cosmetic preparations including "Bar-Je Dry Skin Cleanser" and "Bar-Je Night Cream," formerly designated "Bar-Je Lipid Cleanser" and "Bar-Je Lipid Cream," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That such preparations will supply nourishment, food values or building materials to the skin or underlying tissues; or will duplicate, restore, maintain, replace or replenish the natural oils; or will overcome dry skin or impart or maintain a protective film on the skin; or will make or keep the skin young, youthful or looking young or youthful; or will prevent or remove lines or wrinkles in the skin.

(*b*) That such preparations contain Lipiderm, or that there is any product or element recognized, designated or known as Lipiderm.

(*c*) That said preparations are new, secret, newly discovered, or scientific in composition, principle, method of application, or use; or that such methods are adhered to only in Bar-Je products.

(*d*) That any price is special or introductory unless it is a price substantially lower than the price at which such preparation is customarily sold, specifically limited to a reasonable time, and discontinued at the end of such time limit. (Nov. 8, 1939.)

02461. **Turkey Feed and Hog Feed—Profits, Qualities, Comparative Merits, Etc.**—The Early & Daniel Co., Inc., a corporation, 1117 W. Sixth St., Cincinnati, Ohio, vendor-advertiser, was engaged in selling a turkey feed designated Tuxedo Turkey Growing & Developing Mash and a hog feed designated Tuxedo Porkmaker, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the feeding of Tuxedo Growing & Developing Mash will enable one to have an increase in profits over profits that might be obtained by the feeding of any other similar products.

(*b*) That the feeding of Tuxedo Growing & Developing Mash will cause an increase in the development and growth of poults and turkeys over such development and growth as may be obtained through the feeding of any other similar products.

(*c*) That correct feeding will assure one of an increase in profits or that feed alone is responsible for the quality or size of poultry or stock.

(*d*) That Tuxedo Growing & Developing Mash will insure large bodied breeders or that by feeding this product one is assured strong or healthy or vigorous poults or that the vitamin guarantee offered with this product will assure such results.

(*e*) That Tuxedo Growing & Developing Mash is a better balanced feed than any other similar products.

(*f*) That Tuxedo hog feeds are complete feeds of highest quality.

(*g*) That by feeding Tuxedo Porkmaker a person may expect hogs to attain any definite weight within any specific time, greater than the average weight obtained by other persons feeding said product or similar products under normal conditions; or that any unusual weight has been obtained by a person or persons feeding said product unless in direct connection therewith full disclosure is made of the conditions under which such feeding was carried on. (Nov. 8, 1939.)

02462. **Cosmetics—Qualities, Ailments, and Nature of Product.**—Curtis A. Davis, an individual, operating under the trade name of Jane Cook Method, 123 West Avenue, 30, Los Angeles, Calif., vendor-advertiser, was engaged in selling various so-called "Beauty Aids" including "Jane Cook's Wonder Tissue Creme" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the cream advertised and sold by the said Curtis A. Davis will furnish nourishment to the tissues or cells or increase the size of the bust, or that it will correct a flat chest, flabby or sagging bust, scrawny neck, or an underweight condition, or that it will arouse the circulation of nerve force.

(*b*) That a flat chest is due to a lack of nourishment in the tissue cells of the chest, or to the fact that in a case of a flat chest the cells are shrunken or collapsed, or that they are shrunken or collapsed.

The said Curtis A. Davis further agreed to cease and desist from representing that the product heretofore designated "Jane Cook's Wonder Tissue Creme" is in fact a "tissue" cream, either by the inclusion of that word in the name for the product, or otherwise. (Nov. 13, 1939.)

02463. **Medicinal Preparation—Qualities and History.**—The Kenton Pharmacal Co., a corporation, 423–425 Greenup St., Covington, Ky., vendor-advertiser, was engaged in selling an alleged remedy for athlete's foot, and various local skin diseases, designated "A. M. Solution" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That a medicinal preparation now designated A. M. Solution, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other name—

(*a*) Is a competent or adequate treatment for the following disorders; ring worm (all types), impetigo, eczema, insect bites, prickly heat, ground itch, tropical sores, jockey itch, or other forms of skin irritations, unless limited to the relief of the itching and discomfort commonly associated with such disorders.

(*b*) Is a competent or adequate treatment for any condition of athlete's foot or similar ring worm condition, when such condition is refractory, i. e., after the fungus has burrowed into the skin.

(*c*) That by its application it will destroy any fungus associated with any of the foregoing conditions or disorders with which it does not come in contact, or that by application of it as directed, it will come in contact with such fungus in refractory cases.

(*d*) That years of research were devoted to experiments with combinations of drugs to get the formula of A. M. Solution. (Nov. 15, 1939.)

02464. **Medicinal Preparation—Qualities and Results Guarantee.**—W. W. Von Todenwarth, an individual trading and doing business as W. W. Von Todenwarth Co., Box 7234, Tampa, Fla., vendor-advertiser, was engaged in selling a medicinal preparation designated "Recto-Nol" and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

That a medicinal preparation now designated "Recto-Nol" or any other preparation containing substantially the same ingredients, or possessing the same properties, when sold under that name or any other name—

Is a cure for piles; eliminates all of the suffering caused by piles or the necessity of an operation; is a new scientific or complete treatment for piles; gives lasting comfort or relief, or that the results to be obtained therefrom are guaranteed. (Nov. 17, 1939.)

02465. **Cosmetics—Qualities, Results, and Composition.**—Betty Wales Cosmetics, Inc., a corporation, 104 Avenue Aragon, Coral Gables, Fla., a vendor-advertiser, was engaged in selling a cosmetic designated Betty Wales Wrinkle Reducer and agreed, in connection with

the dissemination of future advertising, to cease and desist from representing directly or by implication:

That a cosmetic preparation, now designated Betty Wales Wrinkle Reducer, or any other preparation containing substantially the same ingredients, or possessing substantially the same properties whether sold under that name or any other name—

(*a*) Will help to reduce, remove, or prevent lines or wrinkles unless it is expressly, clearly, and plainly limited to temporary, superficial, minor lines, and wrinkles due to external causes such as exposure to water, wind, or similar elements, or a dry skin; or

(*b*) Will penetrate the skin or be absorbed by the skin; or

(*c*) Will be beneficial in helping to retain the tone or texture of youthful skin, or to keep the skin young; or

(*d*) Will assure results, or youthful, smooth, velvety skin, or assure young-looking skin free from lines and wrinkles; or

(*e*) Will tone, rejuvenate, nourish, enrich, or youthify skin, or safeguard beauty at 40, or at any other age or time; or

(*f*) Is a fruit oil cream until and unless all of the ingredients other than those used to impart fragrance, are oils from fruits; or

(*g*) Will accomplish any results that are in fact accomplished in whole or in part by the massage required to apply the cream unless massage is clearly and plainly mentioned in direct connection with the cream. (Nov. 22, 1939.)

02466. **Dentifrice—Qualities.**—Bost Tooth Paste Corp., a corporation, Barbasol Building, Indianapolis, Ind., vendor-advertiser, was engaged in selling a dentifrice designated Bost Tooth Paste and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Bost Tooth Paste dissolves tobacco tars, or by any other terminology that Bost Tooth Paste removes tobacco tars or stains which have been absorbed into the enamel of the teeth. (Nov. 29, 1939.)

02467. **Medicinal Preparation—Qualities and Manufacturer.**—J. H. Bramley and Edna B. Brown, operating under the trade names of Tescum Manufacturing Co. and The Tescum Co., 404 Western Reserve Building, Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation for the correction of alcoholism designated Tescum Powders and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the use of "Tescum Powders" will result in the eradication of the drink habit or "stop" excessive drinking or that it is a competent treatment for chronic alcoholism.

The said J. H. Bramley and Edna B. Brown further agreed to cease and desist from the use of the word "Manufacturing" as a part of their trade name, or from otherwise stating, importing or implying that they manufacture this product. (Nov. 29, 1939.)

02468. **Soap—Qualities, Results, Comparative Merits, and Indorsements.**—Lever Brothers Co., a corporation, 50 Memorial Drive, Cambridge, Mass., vendor-advertiser, was engaged in selling a detergent designated Rinso and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That one using Rinso will "never" have red or rough hands.

(*b*) That Rinso in every instance will make clothes at least 5 shades whiter.

(*c*) That colors "never" fade when washed with Rinso.

(*d*) That no other soap will produce the degree or kind of whiteness attained by Rinso.

(*e*) That no other brand of soap will do as good or as quick a job as will Rinso.

(*f*) That the makers of 33 washing machines have recommended the effectiveness of Rinso "above all others." (Nov. 10, 1939.)

02473.[1] **Turkey feed and Hog Feed—Scientific or Relevant Facts and Opportunities.**—The Keelor & Stites Co., a corporation, Carew Tower, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for a turkey feed designated Tuxedo Turkey Growing & Developing Mash and a hog feed designated Tuxedo Porkmaker on behalf of The Early & Daniel Co., Inc., Cincinnati, Ohio, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That correct feeding will assure one of an increase in profits or that feed alone is responsible for the quality or size of poultry or stock. (Nov. 17, 1939.)

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[1] Stipulations 02469 to 02472 were not accepted until after November 30, 1939 and are consequently not included at this point but are published in the ensuing volume.

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

NATIONAL CANDY COMPANY, MARCH OF TIME CANDIES, INC., AND DIETZ GUM COMPANY ET AL. v. FEDERAL TRADE COMMISSION [1]

Nos. 6642, 6647, 6648

(Circuit Court of Appeals, Seventh Circuit, June 2, 1939)

FINDINGS OF COMMISSION—COMPLAINTS—ALLEGATIONS UNDENIED—RULES OF COMMISSION—ADMISSIONS—AS AUTHORIZING FINDING OF ALL FACTS ALLEGED.

Under Federal Trade Commission's rule providing that respondent shall specifically admit or deny or explain each fact alleged in complaint, unless respondent is without knowledge, in which case respondent shall so state, a respondent's failure to [1000] deny and its express admission of allegations of complaint authorized findings of Commission of all facts alleged.

FINDINGS OF COMMISSION—COMPLAINTS—ALLEGATIONS UNDENIED—RULES OF COMMISSION—AS FORECLOSING ISSUE.

Under Federal Trade Commission's rule providing that respondent shall specifically admit or deny or explain each fact alleged in complaint, unless respondent is without knowledge, in which case respondent shall so state, where an alleged fact is left without denial, any issue regarding such allegation is foreclosed by the pleadings.

FINDINGS OF COMMISSION—COMPLAINTS—ALLEGATIONS UNDENIED—EFFECT.

Any allegation of a complaint which is not denied is to be taken as true without evidence or finding.

CEASE AND DESIST ORDERS—NATURE—"ADMINISTRATIVE" AS DISTINGUISHED FROM JUDICIAL DECREES.

The Federal Trade Commission is a "quasi-judicial tribunal," and its orders are "administrative orders" as distinguished from "judicial decrees."

[1] Reported in 104 F. (2d) 999. Cases before Commission reported in 26 F. T. C. 449, 352 and 272, respectively.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING PROHIBITION—VALIDITY—WHETHER LEGISLATIVE IN CHARACTER, IN VIEW TRANSFER ELSEWHERE PRIOR ENFORCEMENT POWER.

Order of Federal Trade Commission, directing candy manufacturer to cease and desist from using lottery scheme in merchandising candy which has tendency to induce purchasers to purchase manufacturer's candy in preference to that offered for sale and sold by competitors, was not objectionable as legislative in character, notwithstanding statutory amendment transferring power to enforce Commission's orders from the Commission to the Department of Justice. Federal Trade Commission Act, Sec. 5, as amended, 52 Stat. 111, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING PROHIBITION—VALIDITY—"EQUAL PROTECTION" CLAUSE.

Even if Federal Trade Commission's order directing candy manufacturer to cease and desist from using lottery scheme in merchandising candy having the tendency and capacity of inducing purchasers to purchase manufacturer's candy in preference to that offered for sale by competitors was legislative in character, order would not be discriminatory, since statute and all orders thereunder apply equally to all persons in like conditions.

CONSTITUTIONAL LAW—"EQUAL PROTECTION" CLAUSE—IN GENERAL.

The "equal protection" clause means that the rights of all persons must rest upon the same rule under similar circumstances.

FEDERAL TRADE COMMISSION ACT—SECTION 5—VALIDITY—"DUE PROCESS."

The statute authorizing Federal Trade Commission to prevent use of unfair methods of competition in interstate commerce does not offend the due process clause, since the provision for a judicial review of an administrative order constitutes "due process of law."

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING PROHIBITION—"EQUAL PROTECTION" CLAUSE—WHERE METHODS IN USE ALSO BY COMPETITORS AND ADMISSION ACCOMPANIED BY SUGGESTED STAY, PENDING RESTRAINING ORDERS AGAINST MOST SUBSTANTIAL.

Federal Trade Commission's order directing candy manufacturer to cease and desist from using lottery scheme in merchandising its candy was not prejudicially discriminatory against manufacturer, notwithstanding its competitors used same methods and in filing admission of Commission's charges manufacturer suggested that Commission hold its order until Commission was in a position to issue some restraining order against at least the most substantial of manufacturer's competitors.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—INTERSTATE COMMERCE—COMPLAINT'S ALLEGATIONS—ADMISSION OF RESPONDENT.

Where allegations of Federal Trade Commission's complaint against candy manufacturer that its products were shipped in interstate commerce were expressly admitted, such admission was unimpeachable in manufacturer's proceeding to review commission's cease and desist order.

TRADE ACTS AND PRACTICES—LOTTERY MERCHANDISING—PUBLIC POLICY.

Sale of candy and punchboards intended to be used in resale of candy by use [1001] of lottery scheme or game of chance is a sound basis for complaint by Federal Trade Commission against candy manufacturer on ground of public policy.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—STATE LAW—IN GENERAL.

In proceeding to review cease and desist order of Federal Trade Commission, court had no occasion to determine or apply state law since commission's order was not based on state law.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—FAILURE TO DENY COMPLAINT AND ADMISSION ALLEGATIONS THEREOF—SUFFICIENCY IN LAW AS ALONE NOT WAIVED.

Candy manufacturer's failure to deny complaint of Federal Trade Commission against it and its express admissions of allegations of complaint waived all questions except sufficiency in law of allegations of complaint.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—CONSENT—JURISDICTION OVER SUBJECT MATTER ONLY AS NOT WAIVED.

Candy manufacturer's consent that cease and desist order might issue by Federal Trade Commission waived every defense except a challenge to the jurisdiction of the Commission over the subject matter.

TRADE ACTS AND PRACTICES—LOTTERY MERCHANDISING—CANDY AND PUNCHBOARD SALE FOR RESALE FORMER BY GAME OF CHANCE.

Complaint of Federal Trade Commission against candy manufacturer alleging sale of candy and punchboards intended to be used in resale of candy by the use of a lottery scheme or a game of chance was sufficient in law.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—CANDY AND PUNCHBOARD SALE FOR RESALE FORMER BY GAME OF CHANCE—IF ABSENT COMPETITION WITH STRAIGHT CANDY SELLERS.

Candy manufacturer's sales of candy and punchboards intended to be used in resale of candy by the use of a lottery scheme or a game of chance, even if manufacturer's business was not in competition with sellers of straight candy, were contrary to established public policy of Federal Government, which was sufficient to justify cease and desist order of Federal Trade Commission.

PUBLIC INTEREST—PUBLIC POLICY AS INVOLVED IN—WHERE VIOLATION—IF INJURY TO COMPETITORS NEITHER ALLEGED NOR PROVED IN CHALLENGED METHOD.

A violation of a public policy is an injury to the public and it is in the public interest to prevent the use of a method of competition which is contrary to an established public policy of the Federal Government, even if injury to competitors is not alleged or proved.

FINDINGS OF COMMISSION—LOTTERY MERCHANDISING—CANDY AND PUNCHBOARD SALE FOR RESALE FORMER BY GAME OF CHANCE—AS "UNFAIR COMPETITION" INJURIOUS BOTH TO PUBLIC AND COMPETITORS OF MANUFACTURER.

Evidence supported Federal Trade Commission's finding that candy manufacturer's sales of candy and punchboards intended to be used in resale of candy by use of a lottery scheme or a game of chance constituted "unfair competition" injurious both to public and to manufacturer's competitors.

(The syllabus, with substituted captions, is taken from 104 F. (2d) 999)

On petitions for review of orders of Commission, by National Candy Co., by March of Time Candies, Inc., and by Dietz Gum Co. and others, orders affirmed in each case.

Mr. Abraham Lowenhaupt, of St. Louis, Mo. (Mr. Irvin H. Fathchild, of Chicago, Ill., of counsel), for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Messrs. P. C. Kolinski* and *James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before SPARKS, TREANOR, and KERNER, Circuit Judges.

SPARKS, *Circuit Judge:*

On motion of the parties, cause No. 6647, *March of Time Candies, Inc.* v. *Federal Trade Commission;* and No. 6648, *Dietz Gum Co. of Chicago, et al.* v. *Federal Trade Commission*, were consolidated for hearing in this court, because the **[1002]** general subject matter in all of the cases is the same. The last two cases were considered upon the briefs submitted in the National Candy case, and we were requested to decide the last two cases in accordance with our disposition of the first. In our discussion, therefore, we shall refer to petitioner as the National Candy Co.

By this action petitioner seeks to review a cease and desist order issued by the Federal Trade Commission under 15 U. S. C. A. section 45. The order was based upon what is termed an amended and supplemental complaint issued by the Commission on April 22, 1937, which in substance contained the following allegations: The petitioner is a New Jersey corporation with its principal office and place of business in Saint Louis, and having another place of business and factories in Chicago. For several years last past it has engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers

located in various States of the United States. It causes its products when sold to be transported from Chicago to purchasers in other States of the Union to their respective places of business. During that time, and now, there is a course of trade and commerce by the petitioner in such candy between and among the States of the Union. In the conduct of this business, petitioner is in competition with other corporations, individuals and partnerships engaged in the sale and distribution of candy in commerce between and among the various States. In the conduct of this business, petitioner 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 where sold and distributed to the consumers thereof.

One of the assortments thus sold is composed of a number of pieces of chocolate-covered candy, together with certain other articles of merchandise, which articles are to be given as prizes to purchasers of the candy, in the following manner: The pieces of candy are of uniform size and shape and the majority of them have centers of the same color. A small number of them have centers of a different color, and retail at a price of two for one cent. The purchaser who procures one of the candies having a center of a color different from the majority is entitled to receive, and is to be given free of charge, one of the articles of merchandise. The purchaser of the last piece of candy is likewise entitled to receive, and to be given free of charge, one of the articles of merchandise. The color of the center of each piece of candy is effectively concealed from the purchasers until a selection has been made and the piece of candy broken open. Thus the winners procure the articles of merchandise wholly by chance. With such assortment the petitioner furnishes to the wholesale dealers and jobbers and retail dealers a display card to be used by the retailer in offering the candies for sale to the public, which card bears a legend or statement informing the prospective purchasers that the candy is being displayed in accordance with the above plan.

Another assortment thus manufactured and displayed by petitioner is composed of a number of chocolate-covered candy malted milk balls, together with a device known as a "pushboard," by means of which the candy in this assortment is displayed to the consuming public in the following manner: The pushcard has a number of partially perforated disks which are arranged in four sections. Concealed within each of the disks is a legend. Each sale is for 1 cent, and the card has statements or legends at the top, stating that certain specified legends entitle the purchaser to 1 ball. Certain other specified legends entitle the purchaser to 2 balls; others re-

spectively to 3, 5, 6, 8, 10, and 20 balls. The card also bears the legend that the last play in each of the 3 sections completed receives 5 balls. The last play on the card receives 15 balls. The legends in the perforated disks are effectively concealed from purchasers until the selection has been made and the disk is separated from the card. The fact as to what number of balls a purchaser receives is thus determined wholly by chance.

The wholesale dealers and jobbers to whom petitioner sells its assortments resells the same to retail dealers and they, as well as those retail dealers who purchase directly from petitioner, offer the same for sale and sell them to the public by means of the plans referred to, thus placing in the hands of others the means of conducting lotteries in the sale of these products. Such plans have the tendency and capacity of inducing purchasers to purchase petitioner's candy in preference to that offered for sale and sold by petitioner's competitors.

[1003] Petitioner's use of such 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 the public policy of the Federal Government. The use of such methods has a tendency to hinder competition and create monopoly in trade and to exclude therefrom such competitors who do not adopt, or do not choose to adopt the use of the same or an equivalent method.

Many dealers and ultimate purchasers of candy are attracted by these methods and by the element of chance involved therein, and they are thereby induced to purchase petitioner's candy in preference to that offered for sale and sold by petitioner's competitors who do not use the same or equivalent methods.

Petitioner's use of these methods has the tendency and capacity, because of the element of chance, to divert trade to petitioner from its competitors who do not use such methods; to exclude such competitors from such trade; to restrain competition and create monopoly in such trade; to deprive the public of the benefit of other competition therein; and to exclude therefrom actual and potential competitors who do not adopt and use the same or equivalent methods.

The petitioner's methods, acts, and purchases, as referred to, are to the prejudice of the public and of petitioner's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

On January 19, 1938, by permission of the Commission, the petitioner who was the respondent below, withdrew its answer theretofore filed, and substituted therefor and filed its amended answer

dated June 18, 1937,[1] in which it failed to deny any allegation of the complaint, and expressly admitted all material allegations thereof, and it consented to the issuance of an order to cease and desist.

The Commission's findings of fact specifically cover every fact alleged in the complaint, and are within the issues tendered by the complaint. Rule VII of the Commission's Rules of Practice provides that the respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state. The petitioner's failure to deny, and its express admission of the allegations of the complaint authorized and warranted the findings by the Commission of all the facts alleged. Under this rule it has been held that where an alleged fact is left without denial, any issue with respect to such allegation is foreclosed by the pleadings. *Federal Trade Commission* v. *Standard Education Society*, 86 F. (2d) 692. Aside from rule VII, any allegation of the complaint which is not denied is to be taken as true without evidence or finding. *Deputron* v. *Young*, 134 U. S. 241; *Swift & Company* v. *United States*, 276 U. S. 311.

It is contended by petitioner that because of the competitive situation in the industry, it will be prejudicially discriminatory against it under the due process clause, to permit the order to become operative against it. For this reason it urges that the order should be vacated. This contention is based on the assertion that practically all candy manufacturers have for many years used, and now use, the same methods of competition as does the petitioner. It concedes the Commission's jurisdiction but questions the propriety of the proceeding in the particular record, and under the law as it has been modified, since the order was entered, by the Amendatory Act of March 21, 1938, 15 U. S. C. A. section 45. Petitioner's contention is that the amendment of section 5 of the act transformed the Commission's previous administrative quasi-judicial order into a legislative regulation of the candy in[1004]terest trade; and that, as legislation it is void for unconstitutional discrimination against petitioner as between it and its competitors against whom no such order has been made. It is settled that the Commission is a quasi-judicial tribunal

[1] "Comes now the respondent, National Candy Co., Inc., and requests permission to withdraw its answer heretofore filed on May 13, 1937, and to substitute therefor this its amended answer to the Commission's complaint issued herein on April 22, 1937, and states that it desires to and hereby waives hearings on the charges set forth in the complaint herein; that it admits all of the material allegations of the complaint to be true save and except it states that it has not since April 2, 1934 sold or shipped in interstate commerce the assortment described in paragraph 2 (a) of the complaint; that it consents that the Commission, without hearing, without further evidence, and without other intervening procedure, may make, enter, issue and serve upon it, its findings as to the facts and conclusion based thereon, and an order to cease and desist from the methods of competition alleged in the complaint."

and its orders are administrative orders as distinguished from judicial decrees. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495; *Humphrey's Executor* v. *United States*, 295 U. S. 602; *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307. Prior to the Amendatory Act, the Commission had power to file in this court a petition for the enforcement of its order to cease and desist, and the other party had power to file a petition for a decree setting such order aside. This remedy of the Commission was eliminated by the amendment, and the petitioner's right to file a petition to set aside the order is left precisely as it was in the original enactment, except that the amendment fixed a limit of 60 days on the petitioner's right to exercise its power to file such petition. The pending petition was duly filed within the time.

Under the amendment, if the respondent fails to file a petition to set aside the order within 60 days, the Department of Justice is given power in the case of the violation of such order, to institute a suit to recover from such respondent a civil penalty in the sum of not more than $5,000. In other words, the power to enforce is transferred from the Commission to the Department of Justice, and jurisdiction of such proceeding is transferred from the Circuit Court of Appeals to the United States District Courts.

We think the order attacked is not legislative in its character, and that if it were it would not be discriminatory because the statute and all orders thereunder apply equally to all persons in like conditions. The equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances. *Louisville* v. *Coleman*, 277 U. S. 32. The amendment did not transform the Commission's order into a legislative act. It merely changed the Government's remedy for its enforcement. Cf. *Crane* v. *Hahlo*, 258 U. S. 142. So far as this court is concerned, the constitutionality of section 5 of the original act has been determined. *Federal Trade Commission* v. *McLean & Son*, 84 F. (2d) 910. The provision for a judicial review of an administrative order constitutes due process of law (*Bourjois, Inc.* v. *Chapman*, 301 U. S. 183), and we are convinced that section 5 as amended does not offend the due process clause.

Petitioner further urges that it would be prejudicially discriminatory against it to permit the order to become operative because its competitors use the same methods. In other words, it argues that unless the Government proceeds against all such offenders at one time, it would be wrong to proceed against it alone. There is no merit in this contention. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304.

Petitioner also contends that the order must rest upon a complaint which alleges and finds a set of facts within the jurisdiction of the Commission, and it urges that the facts here alleged and found did not disclose that petitioner has shipped any of the products in question in interstate commerce. For this reason it urges that the order should be vacated. A perusal of the complaint and findings, which are practically identical, discloses that such allegations and findings are present. Since the allegations of the complaint are expressly admitted, such admission is unimpeachable now.

Petitioner further calls to our attention the fact that at the time it filed its amended and substituted answer on January 19, 1938, it suggested that the Commission should hold it until it was in a position to issue some restraining orders against at least the most substantial of respondent's competitors. It is not claimed that this was agreed to by the Commission, in fact it was not agreed to and the order complained of was entered with petitioner's knowledge within 3 days after the amended answer was filed. This suggestion does not add any support to petitioner's contention.

Petitioner's next contention is that the complaint does not allege, and the findings do not determine, that the petitioner's products are deceptive or otherwise injurious to the consumer. In connection with this contention, it further urges that the **[1005]** asserted jurisdiction upon grounds of public policy is not supported by the decisions bearing upon this subject matter. It will be noted that these contentions do not purport to challenge the jurisdiction of the Commission over the subject matter of the complaint.

If petitioner may rightfully challenge the sufficiency in law of the complaint, still we think that there is no issue presented in these respects. The complaint does not allege that petitioner's products are deceptive or otherwise injurious to the consumer, but it does allege the sale of candy and punchboards intended to be used in the resale of the candy by the use of a lottery scheme or game of chance. This being true, the element of chance which is admitted, is as sound a basis for complaint as deception would be. *Federal Trade Commission* v. *Keppel & Bro.*, *supra.* Under the ruling of that case, we think there is no error with respect to this issue and that the Commission's jurisdiction upon grounds of public policy is complete. It is urged, however, in this respect that the decision of *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64, nullifies the decision in the Keppel case. With this conclusion we cannot concur. The Erie case merely holds that in determining the law of a State, the Federal courts are to be governed by the decision of the highest courts of such State. In the instant case, however, this court has no occasion to determine or apply any State law because the Commission's order is not based upon any State law.

It is further contended by petitioner that the order is not properly restricted to shipments in interstate commerce. A perusal of the order discloses quite clearly that it is properly restricted to shipments in interstate commerce and the contention is denied. It is fair to say that this contention is based upon petitioner's objection to the words "in connection with the offering for sale and distribution of candy in interstate commerce." From this language petitioner anticipates a construction of it which will be held to apply to intrastate sales of chance candy, and it insists that the words "in connection with" should be stricken out of the order. To do so might leave the petitioner free to sell candy at one price on one contract, and at the same time enter a separate contract and sell the punchboard to be used in the resale of the candy. Such modification would obviously defeat the intention of Congress and provide a way of defeating the purpose of the enactment. We are convinced that the Commission's order cannot be rationally construed to interfere with intrastate commerce.

It is further contended by petitioner that the order is too broad in that it purports to prohibit the shipment of candy which may be sold or distributed upon a chance basis and, as such, is in conflict with an earlier decision of this court, *Federal Trade Commission* v. *McLean*, 84 F. (2d) 910. There we concluded that the language of the order was sufficiently broad to apply to straight candy to be sold by the several respondents, and we accordingly struck the word "may" from paragraph 1 and 2 of the order, which is identical with the order here involved, and substituted therefor the words "are designed to." In that case, and here, counsel for the Commission did not deny that straight candy sold to a retailer might be resold by him for use in a game of chance, but it did deny that it was, and is now, legally possible for the words of the original order to be construed to include sales of straight candy.

This particular question had but scant attention in the argument of that case, and there was not presented to this court the authorities upon which the Commission based its opinion that the words of the original order could not be construed to apply to straight candy. The Commission filed no petition for a rehearing nor did it ask for a writ of certiorari. It now presents authorities in support of its construction of the present order and urges us to approve the present order on the theory that it cannot reasonably be construed to apply to the sale and distribution of straight candy, that is to say, to candy that is not "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."

We deem this suggestion worthy of consideration in view of the fact that the development of plans calculated to evade the intent of the statute, as illustrated by those here presented, convinces us that

the substitution we made in the *McLean* case lacks effectiveness in carrying out the intention of Congress. A further consideration convinces us that the language of the order in the light of the allegations of the **[1006]** complaint and findings of the Commission cannot reasonably be construed to be applied to the sale of "straight" candy. Regardless of the substitution made by us in the *McLean* case, we affirm the order of the Commission as here presented. We regard it as inapplicable to "straight" candy or to any candy that does not carry an unfair appeal to retail dealers and retail purchasers because of the element of chance involved in the sale thereof. We had no intention of holding otherwise in the *McLean* case.

It is further contended by petitioner that its "admissions of answer did not waive insufficiency and constitutional error asserted." We are of opinion that the Commission's rulings were not violative of the Federal Constitution, and that there were no insufficiencies of allegation in the complaint, the findings, or the order. By petitioner's failure to deny, and its express admissions of the allegations of the complaint, it waived all questions except the sufficiency in law of the allegations of complaint. Likewise its consent that the cease and desist order might issue waived every defense except a challenge of the jurisdiction of the Commission over the subject matter. This jurisdiction the petitioner concedes in its complaint, and we think the complaint is sufficient in law.

Petitioner further contends that its business as conducted according to the plans hereinbefore set forth, is not in competition with sellers of straight candy. We do not concede this to be true, but if true, such sales are contrary to the established public policy of the Federal Government. *Federal Trade Commission* v. *Keppel & Brother*, *supra*. This is sufficient even in the absence of competition, for in the *Keppel* case the Court said that a method of competition which is contrary to the established public policy of the United States in an unfair method of competition within the intent and meaning of section 5 of the statute. A violation of a public policy is an injury to the public, and it is in the public interest to prevent the use of a method of competition which is contrary to an established public policy of the Federal Government, even if injury to competitors be not alleged or proved. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441. However, we are of opinion that the use of the unfair methods in question constituted injuries both to the public and to petitioner's competitors (see *Bunte Bros. Inc.* v. *Federal Trade Commission*, decided by us May 17, 1939), and this finding is supported by substantial evidence.

In each of the cases the order of the Federal Trade Commission is affirmed.

CALIFORNIA LUMBERMEN'S COUNCIL ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 8984

(Circuit Court of Appeals, Ninth Circuit. June 5, 1939)

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—TRANSCRIPTS OF RECORD—FULLNESS AND CORRECTNESS—MOTION RAISING—AS PREMATURE IN ADVANCE OF CONSIDERATION ON MERITS.

In proceeding to review a cease and desist order of Federal Trade Commission, matter presented by motion of petitioners for order requiring respondent to file supplemental transcript of record on ground that record filed was not a full, true, and correct transcript could be properly considered by Circuit Court of Appeals only in connection with consideration of merits of petition to review cease and desist order.

(The syllabus, with substituted caption, is taken from 104 F. (2d) 855)

In proceeding by California Lumbermen's Council and others to review cease and desist order of Commission, and on petitioner's motion for order requiring respondent to file supplemental transcript of record, motion denied.

Mr. Morgan J. Doyle, of San Francisco, Calif., for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Daniel J. Murphy* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., for respondent.

Before GARRECHT, HANEY, and STEPHENS, Circuit Judges. GARRECHT, Circuit Judge, dissenting.

HANEY and STEPHENS, *Circuit Judges:*

The motion of the petitioners for an order requiring respondent to file a supplemental transcript of the record is denied. We are of the opinion that the matters in the motion can be properly considered by us only in connection with our consideration of the merits of the petition to review the cease and desist order made by the respondent.

GARRECHT, *Circuit Judge*, dissenting:

Petitioners assert that the transcript heretofore filed by respondent is incomplete in this, that certain exhibits and offers of evidence were made by petitioners during the trial which were refused and rejected.

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[1] Reported in 104 F. (2d) 855. See for opinion and decision on motion to strike transcript of record, 103 F. (2d) 304, 28 F. T. C. 1954. Case before Commission reported in 27 F. T. C. 515.

Such offers and rulings respondent has refused to make a part of the record. That these assertions are true is admitted. Petitioners insist that these exhibits and evidence are an important part of their defense to this action. Respondent claims that the exhibits and evidence are immaterial. It is further [856] charged by petitioners and admitted by respondent that certain other evidence offered by petitioners was received, but thereafter, and before such evidence was transcribed, the examiner who conducted the hearing on behalf of respondent ordered the court reporter to delete such testimony from the record. It is thus made to appear, which is admitted by all parties, that the record which respondent has filed in this court is not a full, true, and correct transcript of all that took place in the course of the hearing.

I believe this court should require these omissions to be supplied so that the court may intelligently pass on the materiality and relevancy of the proffered proof and determine for itself whether or not it constitutes a defense to the action.

BENJAMIN D. RITHOLZ, MORRIS I. RITHOLZ, SAMUEL J. RITHOLZ, ET AL. v. CHARLES H. MARCH, GARLAND S. FERGUSON, JR., EWIN L. DAVIS, ET AL.[1]

No. 7317

(United States Court of Appeals for the District of Columbia. June 26, 1939)

STATUTORY CONSTRUCTION—REPEAL—LATER STATUTE OR STATUTES—AS ACCOMPLISHING BY IMPLICATION.

A statute is impliedly repealed by a later statute when provisions in the two are in irreconcilable conflict, or when the later statute covers the whole subject of the earlier one and is clearly intended as a substitute.

STATUTORY CONSTRUCTION—REPEAL—LATER STATUTE OR STATUTES—LEGISLATIVE INTENT.

Whether a statute is repealed by a later one on the ground of repugnancy or substitution is a question of legislative intent.

STATUTORY CONSTRUCTION—REPEAL—LATER STATUTE OR STATUTES—LEGISLATIVE INTENT—WHERE POWERS OR DIRECTIONS MAY CO-EXIST.

Where powers or directions under several statutes are such as may well exist together, an implication of repeal cannot be allowed.

STATUTORY CONSTRUCTION—REPEAL—LATER STATUTE OR STATUTES—LEGISLATIVE INTENT—IN GENERAL.

The intent of the legislature to impliedly repeal a statute by a later one must be clear and manifest.

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[1] Reported in 105 F. (2d) 937.

CONSTITUTIONAL LAW—PROCEDURE.

No one has a vested right in any given mode of procedure.

CONSTITUTIONAL LAW—PROCEDURE—"DUE PROCESS OF LAW"—WHERE LEGISLATIVE CHANGE.

"Due process of law" is not denied by a legislative change, as long as a substantial and efficient remedy remains or is provided.

FEDERAL TRADE COMMISSION ACT—SECTION 5—AMENDING ACT OF MARCH 21, 1938—ENFORCEMENT AND REVIEW CHANGES—WHETHER REPEAL ORIGINAL.

Federal Trade Commission Act, in so far as it authorized the Commission to institute proceedings to prevent unfair methods of competition, was not impliedly repealed by a statute conferring the power anew but changing the method of enforcement and review of cease and desist orders, so as to make the orders final within sixty days unless the person aggrieved applies to a Circuit Court of Appeals for review, instead of requiring the Commission to apply to the court for an enforcement order, as before. Federal Trade Commission Act, secs. 4, 5, as amended, 15 U. S. C. A., secs. 44, 45; Act of March 21, 1938, sec. 5 (a), 15 U. S. C. A., sec. 45 note.

(Syllabus, with substituted captions, is taken from 105 F. (2d) 937)

On appeal from District Court of United States for District of Columbia, from judgment dismissing bill in suit by Benjamin D. Ritholz and others against Charles H. March and others, to enjoin Commission from further prosecuting complaint against plaintiffs, and in which plaintiffs were charged with unfair methods of competition, decision of court below affirmed.

Mr. August H. Moran and *Miss Sylvia D. Kessler*, both of Washington, D. C., for appellants.

Messrs. Martin A. Morrison and *P. B. Morehouse*, both of Washington, D. C., for appellees.

Before GRONER, *Chief Justice*, and MILLER and RUTLEDGE, *Associate Justices*.

GRONER, *Chief Justice:*

Appellants are citizens of the United States and residents of the State of Illinois, and, as copartners under the trade names of Dr. Ritholz Optical Co. and National Optical Stores Co., are engaged in offering for sale and selling optical goods in several States. In the latter part of 1937 the Federal Trade Commission issued a complaint, charging appellants with unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.[1] Appellants appeared and answered, denying the charge. The cause was docketed as Commission No. 3143 and referred to an examiner,

[1] Act of September 26, 1914, 38 Stat. 717, as amended; 15 U. S. C. A. 41, *et seq.*; 4 F. C. A. Tit. 15, secs. 41 *et seq.*

but prior to the conclusion of the hearings appellants brought suit in the district court for an injunction to restrain the Commission from further prosecuting the complaint and from holding any hearing and taking any further testimony or evidence in relation thereto. The bill alleges that, since the issuance of the complaint, the act of September 26, 1914, known as the "Federal Trade Commission Act," and particularly Section 5 thereof, has been amended by an act of [938] Congress approved March 21, 1938;[2] that the amendment substitutes for Section 5 of the original act an entirely new section, which creates "new rights, obligations, liabilities, powers, penalties, and other changes of a substantive nature"; that the amendment is repugnant to, is in irreconcilable conflict with, and supersedes and repeals former Section 5 of the act, as the result of which the Commission is proceeding under a void statute. The Commission appeared and moved to dismiss the bill on sundry grounds. The district court sustained the motion to dismiss and found as a conclusion of law that Section 5 of the 1914 act had not been repealed by Section 5 of the 1938 act and also that the court was without jurisdiction since there was an adequate remedy at law by appeal from the decision of the Commission.

Passing by for the moment the objection to the lower court's jurisdiction to grant equitable relief, we come to the principal question raised by the bill: Did the amendment of section 5 of the Federal Trade Commission Act of 1914 repeal former section 5 so as to terminate the Commission's authority to proceed against persons for unfair competition occurring before the date of amendment? The original section 5 was enacted to prevent unfair methods of competition in interstate commerce, and the Commission was authorized to institute proceedings to prevent such acts whenever the public interest demanded. After due notice and hearing, if the unfair method of competition was found to exist, the Commission was authorized to issue a cease and desist order; and, if the person against whom it was issued neglected to obey the order, the Commission might apply to a court of appeals to enforce it or, on the other hand, if the person required to cease and desist thought himself aggrieved, he might obtain a review of such order in a like court. In 1938 Congress amended section 5 by adding as "unlawful" unfair or deceptive acts or practices in commerce, and by changing the procedure after entry of the order, by a provision making it final within 60 days unless the person aggrieved applies to a court for judicial review, in which case the order of the court becomes final. In other words, whereas under the original section the initiative for making the order effective in the event of recal-

[2] 52 Stat. 111.

citrancy was placed on the Commission, under the amendment the order becomes effective within 60 days unless petition for judicial review is filed by the respondent within that time. And by section 5 (a) of the amending act, if the cease and desist order was served prior to the amendment, the 60-day period begins to run as of the date of the enactment. The only other change of any moment is in authorizing a civil action in the name of the United States for the recovery of a civil penalty for disobedience of the final order. Except in the latter respect, the changes are wholly procedural, but in substituting a penalty for violation of an order in place of a contempt proceeding, appellants say that the amendment is illegal as to previous offenses, and in that view the presumption should be indulged that Congress intended a complete repeal.

But we think this is not the case. The amending act contains no words of repeal, and if section 5 of the original act was repealed it was by implication only. In *Posadas* v. *National City Bank*, 296 U. S. 497, 503, the Supreme Court said that there are two categories of repeals by implication—one, where provisions in the two acts are in irreconcilable conflict, and the other, where the later act covers the whole subject of the earlier one and is clearly intended as a substitute. In that case the National City Bank of New York in 1930 had established branches at Manila and Cebu in the Philippine Islands under the provisions of section 25 of the Federal Reserve Act of December 23, 1913. In 1931 the Philippine Government levied a tax on branch banks not permitted by Revised Statutes 5219. The bank paid and sued to recover, and the Philippine defense was that legislation subsequent to the passage of the Federal Reserve Act destroyed the immunity claimed by the bank under the statute. The new legislation amended section 25 but retained the power of national banks to establish branches in United States dependencies. There, as here, it was claimed that the effect of the amendment was to repeal the prior provisions of the act. But the court held that such parts of the original section 25 as were copied into the amended act were not thereby repealed and immediately re-enacted, but continued, uninterruptedly, to be the law after the [939] amendment precisely as they were before. The decision is particularly apposite in its statement and reiteration of the rule that whether a statute is repealed by a later one, on the ground of repugnancy or substitution, is a question of legislative intent and that, where powers or directions under several acts are such as may well exist together, an implication of repeal cannot be allowed. The intent of the legislature to repeal must be clear and manifest. In the still more recent case of *United States* v. *Powers, et al.*, 307 U. S. 214 (decided May 15, 1939), a similar question arose as the

result of an act extending the life of the Connally Hot Oil Act.[8] That act by its terms expired June 16, 1937, but on June 14, 1937, Congress amended this section of the act by striking out "June 16, 1937" and inserting "June 30, 1939," and the question was whether violations of the act committed prior to June 16, 1937, might be prosecuted under an indictment returned subsequent thereto. The court held that the act had never ceased to be in effect and that the amendment, unless it was apparent that Congress intended it should have this effect, should not be held to condone offenses committed prior to its passage.

The original Federal Trade Commission Act consisted of 11 sections. The act of 1938 amends section 4 by the addition of certain "definitions," and section 5 in the respects already mentioned, and adds several new sections not material here. It leaves unchanged the Commission's authority to prevent unfair methods of competition. Only the procedure after the issuance of an order by the Commission is changed. Under the original procedure the initiative in requiring obedience to the order was placed on the Commission. Under the amendment the order is final within 60 days unless the respondent shall apply to a court for a judicial review; and, if it be conceded that the change is to place a greater burden on appellant and others in like situation, the answer is that no one has a vested right in any given mode of procedure. *Baltimore & P. Railroad Co.* v. *Grant*, 98 U. S. 398, 401; *Gwin* v. *United States*, 184 U. S. 669, 674; *Crane* v. *Hahlo*, 258 U. S. 142, 147. So long as a substantial and efficient remedy remains or is provided, due process of law is not denied by a legislative change, and in this view it cannot be successfully contended that the change created by the amendment can be said to indicate or evince an intention of Congress by the amendment to repeal the original act.

"There is a presumption against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience." We are unwilling to conclude that although the same acts continue to be prohibited after June 16, 1937, as before, violations committed prior to that time will not be punishable thereafter. *United States* v. *Powers, et al., supra.*

We have examined the cases upon which counsel rely: *King* v. *Cornell*, 106 U. S. 395; *United States* v. *Tynen*, 11 Wall. 88; *Chase* v. *United States*, 256 U. S. 1; *Hassett* v. *Welch, et al.*, 303 U. S. 303. But we think they are distinguishable. In each of the first three Congress had enacted a new statute, inconsistent with and covering the entire subject matter of the old. Since as to all of them there was no indication of continuity, a repeal was necessarily implied.

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[8] 15 U. S. C. A. 715, *et seq.*, 4 F. C. A. Tit. 15, sec. 715, *et seq.*

In the *Hassett* case the question was whether an amendment covering new matter had any retrospective application.

In the case we have here, the act of Congress which constituted the Federal Trade Commission and defined its duties was changed by the amendment so as to enlarge the Commission's field of operations and to revamp the procedure for enforcement of its orders. Both before and after the amendment the Commission had precisely the same power to issue complaints, to make findings, and to render a decision, and that is what appellants now ask us to restrain. The Commission is not seeking to penalize appellants for prior acts but, as we have seen, is carrying on an administrative proceeding which at most can result in an order prospective in effect. The prior acts afford merely the occasion for the institution of the proceedings. If we need any indication that it was the intent of Congress that the new method of enforcement is to apply to pending complaints, we have it in section 5 (a) [940] of the amending act—that as to orders already issued the new 60-day period for review is to date from the enactment.

In view of what we have already said, we find it unnecessary to consider the further question whether the bill should be dismissed because plaintiff has not exhausted the administrative provisions of the act. On the ground stated we are of opinion the dismissal of the bill was correct and should be affirmed.

Affirmed.

BAYUK CIGARS, INC. v. FEDERAL TRADE COMMISSION[1]

No. 3788

(Circuit Court of Appeals, Third Circuit. June 26, 1939)

Decree vacating decree of May 8, 1939, 28 F. T. C. 1958, which modified prior decree modifying and affirming Commission's cease and desist order in Docket 1391, 12 F. T. C. 19, with respect to use of certain labels, designations, etc., for domestically made cigars containing either no Havana tobacco or such tobacco only in a minor proportion; and

(*a*) Ordering petitioner, Bayuk Cigars, Inc., respondent in proceeding before Commission, its officers, etc., to cease and desist, on and after 2 years from date, from (1) using trade-mark or name "Havana Ribbon" as descriptive of its said cigars, and from (2) using word "Havana" or other word or words of similar import as brand or trade name or as descriptive of cigars, unless composed entirely or in substantial part of tobacco grown on Island of Cuba, and subject to qualifications below set forth if composed in part only of such tobacco; and

[1] Not reported in Federal Reporter.

(*b*) Ordering that, during said period, court's decree of November 21, 1930, shall remain in full force and effect, subject to right in petitioner to use, with new brand name including word "Ribbon", but eliminating word "Havana," qualifying words "Formerly Havana Ribbon" in substantially smaller letters; and

(*c*) Ordering further that original decree of June 14, 1930, shall remain in full force and effect with respect to brand and trade name "Mapacuba"; and

(*d*) Retaining, without withdrawing, limiting or otherwise disturbing jurisdiction of Commission, jurisdiction to act within court's powers in any exigencies that may arise by reason of the premises.[2]

Mr. C. Andrade, Jr., of New York City, and *Fox, Rothschild, O'Brien & Frankel*, of Philadelphia, Pa., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant chief counsel, and *Mr. Marshall Morgan* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Decree

And now, The 26th day of June 1939, upon further consideration, by consent of the parties, of the decree entered in the above cause on November 21, 1930, and with the consent of said Bayuk Cigars Incorporated,

It is now ordered, adjudged, and decreed, By this Court that the Decree of May 8th, 1939 in the above-entitled cause be and the same is hereby vacated and in lieu thereof it is Ordered, Adjudged, and Decreed that Bayuk Cigars Inc., its officers, directors, agents, representatives, servants, and employees, on and after two years from the date hereof, shall cease and desist, in connection with the sale or distribution of cigars from any of its factories in interstate commerce.

1. From using the trade mark or trade name "Havana Ribbon" as descriptive of cigars of the type and composition or substantially of the type and composition lately and now sold under the aforesaid trade or brand name;

2. From using the word "Havana" or other word or words of similar import, alone or in conjunction with the word "Ribbon," or any other word or words, either as a brand or trade name or as descriptive of cigars unless such cigars are composed entirely or in substantial part of tobacco grown on the Island of Cuba; provided that if the cigars be composed in part only of such tobacco, that fact shall be indicated by the brand or trade name (if the word "Havana" or like word occurs therein) the words of which that are descriptive

[2] See, for June 14, 1930, and November 21, 1930, decrees, 14 F. T. C. 708.

of tobacco content shall be of uniform size, together with such accompanying descriptive words as may be necessary clearly to indicate the true composition and character of said cigars. If the word "Havana" or like word is not used in the brand name, but only in descriptive words applied to cigars composed in substantial part of Havana tobacco, such descriptive matter shall fairly indicate the true composition and character of the cigars. In all such descriptive matter the filler tobaccos used in said cigars shall be set forth in the order of their predominance by weight in letters of equal size and conspicuousness. *Provided further*, That the words "Havana Filler" may, without other description, be applied, either as part of a brand name or otherwise, to cigars having a filler composed entirely of tobacco grown on the Island of Cuba.

It is further ordered, adjudged, and decreed, That pending the expiration of the said period of 2 years, the decree of this court entered November 21, 1930 shall remain in full force and effect save that Bayuk Cigars Inc. upon the adoption of some new brand name containing the word "Ribbon" but eliminating the word "Havana" may during said period of 2 years but not thereafter accompany such new brand name with the words "Formerly Havana Ribbon" without the addition of the qualifying words prescribed in the aforesaid Decree of November 21, 1930; provided however that such accompanying words be in letters, substantially smaller than the new brand name.

It is further ordered, adjudged, and decreed, That the original decree of June 14, 1930 entered in the above cause shall remain in full force and effect with respect to the brand and trade name MAPACUBA.

It is further ordered, adjudged, and decreed, That within the period of 2 years and 30 days from the date of this decree, Bayuk Cigars Inc. be and is hereby directed and ordered to file with the Federal Trade Commission, Washington, District of Columbia, a report in writing, setting forth with particularity the manner in which it has complied with the terms of this Decree.

Without withdrawing, limiting or otherwise disturbing the jurisdiction of the Federal Trade Commission over this case, the court will retain jurisdiction of the case to act within its powers in any exigencies that may arise by reason of the premises.

Per Curiam

E. J. BRACH & SONS v. FEDERAL TRADE COMMISSION[1]

No. 6963

(Circuit Court of Appeals, Seventh Circuit. June 29, 1939)

Decree dismissing, on stipulation and consent of parties, petition for review of cease and desist order of Commission in the matter of E. J. Brach & Sons, Docket 3307, March 15, 1939, 28 F. T. C. 1120, directing respondent, its officers, etc., to cease and desist from lottery merchanadising schemes in connection with offer, etc., in interstate commerce, of candy, accompanied by punchboards and push cards for use in sale and distribution thereof.

Mr. Joseph T. Zoline of Ryan, Condon & Livingston, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. D. C. Daniel* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Decree

Now this day come the parties by their counsel and present and file a stipulation to dismiss this appeal, which said stipulation is in the words and figures following, to wit:

"It is hereby stipulated and agreed by and between E. J. Brach & Sons, petitioner in the above entitled appeal, and the Federal Trade Commission, respondent, that the said above entitled appeal may be dismissed without cost to either party.

"E. J. Brach & Sons, *Petitioner.*
"By Joseph T. Zoline, *Its Attorney.*
"Federal Trade Commission,
Respondent.
"By W. T. Kelley."

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the petition of E. J. Brach & Sons, a corporation, for a review of the cease and desist order of the Federal Trade Commission, entered therein on March 15, 1939, be, and the same is hereby, dismissed, pursuant to the foregoing stipulation.

[1] Not reported in Federal Reporter.

JUSTIN HAYNES & COMPANY, INC. v. FEDERAL TRADE COMMISSION[1]

No. 359

(Circuit Court of Appeals, Second Circuit. July 10, 1939)

CEASE AND DESIST ORDERS—QUALITIES OR PROPERTIES OF PRODUCT—DRUGS AND MEDICINALS—"ASPIRUB"—TRADE NAME AND OTHER MISREPRESENTATION.

Evidence of expert witnesses that only a small amount of aspirin in medical compound was absorbed into body when applied dermally, and that it was of little or no therapeutic value for the various pains and ailments which it was represented to relieve, sustained order of Federal Trade Commission forbidding further use of the trade name Aspirub and forbidding further representations as to the beneficial effect of aspirin as used in the compound. Federal Trade Commission Act, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—EVIDENCE—WEIGHT.

The Circuit Court of Appeals cannot pass upon the weight of the evidence in reviewing order of Federal Trade Commission.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—COMPETITIVE PREREQUISITE—"ASPIRUB" MEDICAL PREPARATION.

Evidence sustained order of Federal Trade Commission forbidding further use of trade name Aspirub and further false and deceptive representations on ground that petitioner's medical preparation for external use containing aspirin was in competition with other aspirin products offered for external or internal use.

UNFAIR METHODS OF COMPETITION—FALSE AND MISLEADING ADVERTISING—IF ARTICLE IN COMPETITION.

False and deceptive advertising of an article in competition with other articles in commerce constituted "unfair methods of competition," within provision of Federal Trade Commission Act, even prior to amendment which expressly included unfair or deceptive acts or practices, as against contention that such false and deceptive advertising was at most only misbranding in violation of the Pure Food and Drugs Act. Pure Food and Drug Act, 21 U. S. C. A. section 1 et seq.

(Syllabus, with substituted captions, is taken from 105 F. (2d) 988)

On petition by Justin Haynes & Co., Inc., to review and set aside order of Commission directed against petitioner, order affirmed.

Munn, Anderson & Liddy, of New York City (Messrs. Orson D. Munn and John H. Glaccum, both of New York City, of counsel), for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Messrs. S. Brogdyne Teu, II, Reuben J. Martin*, and *James W. Nichols*, special attorneys, all of Washington, D. C., for respondent.

[1] Reported in 105 F. (2d) 988. Case before Commission reported in 26 F. T. C. 1147.

Before SWAN, AUGUSTUS N. HAND, and CLARK, Circuit Judges.

SWAN, *Circuit Judge:*

The petitioner is a New York corporation which sells and distributes in interstate commerce under the trade name of Aspirub a medical preparation for external use containing 1.5 percent of aspirin. It has advertised the curative properties of its preparation in glowing terms, placing special stress upon the aspirin constituent. In March 1936 the Commission filed a complaint against the petitioner charging that its advertising was false and deceptive and [989] constituted unfair methods of competition in commerce contrary to the provisions of the Federal Trade Commission Act, 15 U. S. C. A. section 45. The gravamen of the complaint is that Aspirub has no therapeutic value as aspirin because of its negligible aspirin content and because aspirin cannot be absorbed into the body through the skin. After extensive hearings an order was entered on April 21, 1938 which in substance forbids the petitioner to use the trade name Aspirub and to represent that its preparation accomplishes to any substantial extent the beneficial effects of aspirin or is absorbable through the skin in an amount sufficient to produce any beneficial therapeutic effect. This order the petitioner asks us to set aside, its main contention being that the Commission's findings of fact in support of the order are not sustained by any substantial evidence.

The essential findings are that only an insignificant amount of the aspirin in the petitioner's compound is absorbed into the human body when applied dermally (folios 107, 111) and that it is of little or no therapeutic value for the various pains and ailments which it is represented to relieve (folio 110). These findings are supported by the testimony of the three expert witnesses called by the Commission; and in the light of such testimony there can be no doubt that the petitioner's advertisements were grossly exaggerated and misleading. It is true that these witnesses had no personal experience with Aspirub and based their opinions upon their general medical and pharmacological knowledge. They were, however, well-qualified expert witnesses, and the fact that other experts called by the petitioner expressed a contrary opinion and testified to experiments cannot enable the petitioner to contend successfully that there was no substantial evidence to support the Commission's findings. That this court is not permitted to pass upon the weight of the evidence is too well established to require the citation of authorities.

The petitioner also contends that Aspirub is the only medical preparation for external use containing aspirin and is therefore not in competition with any other product in interstate commerce. But the Commission's finding as to competition is supported by evidence.

Witness Manss of the Bayer Company testified that in so far as Aspirub is recommended as a relief for aches and pains and as an alleviant for colds he regards it as in competition with his company's product Aspirin, as well as in competition with other preparations offered for external or internal use. Indeed, that it actually or potentially competes with other aspirin products seems self evident; the petitioner itself advertises its preparation as a "new convenient way to use aspirin." *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, is distinguishable, since there no proof was given as to competition.

Finally, it is urged that the Commission's order does not restrain "unfair methods of competition" but is directed against conduct which is, at most, only "misbranding," contrary to the Pure Food and Drugs Act, U. S. C. A. title 21. The 1938 amendment to section 5 of the Federal Trade Commission Act expressly includes "unfair or deceptive acts or practices in commerce." This amendment was approved March 21, 1938, which was after the hearings in the case at bar had closed but before the Commission had issued its order. In favor of the petitioner we shall assume that the amendment is not applicable; therefore, if the order is to be supported, it must be as a restraint of "unfair methods of competition in commerce." But we entertain no doubt that false and deceptive advertising of an article in competition with other articles in commerce falls under that definition and was within the Commission's jurisdiction. See *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212.

Order affirmed.

H. N. HEUSNER & SON v. FEDERAL TRADE COMMISSION [1]

No. 6794

(Circuit Court of Appeals, Third Circuit. August 10, 1939)

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—SCOPE AND EFFECT OF ORDER—COMPOSITION OF PRODUCT—LABELS AND LEGENDS—WHERE LONG MISUSE—CUSTOMER CONFUSION AND OWNER INJURY—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO—SECONDARY AND LIMITED MEANING AS POSSIBLY ATTACHING.

In determining whether misleading label or legend used in describing goods should be eliminated, court would consider whether elimination of word "Havana" in description of cigars made of Pennsylvania tobacco might cause confusion among devotees of manufacturer's product as well as substantial loss to manufacturer and whether the long misuse of the

[1] Reported in 106 F. (2d) 596. Case before Commission reported in 24 F. T. C. 1370.

word "Havana" lent such term a species of secondary meaning in connection with manufacturer's cigars.

CEASE AND DESIST ORDERS—APPELLANT PROCEEDINGS OR PROCEDURE—ENFORCEMENT OF ORDER—COMPOSITION OF PRODUCT—LABELS AND LEGENDS—WHERE LONG MISUSE—CUSTOMER CONFUSION AND OWNER INJURY—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO—SECONDARY AND LIMITED MEANING AS POSSIBLY ATTACHING—COMPLIANCE PERIOD.

A Pennsylvania manufacturer of cigars containing only Pennsylvania tobacco but branded "Havana Smokers" was allowed 2 years within which to eliminate the word "Havana" in designating its product, where the cigars had been so branded since 1902, and sudden change would have caused confusion among smokers of manufacturer's cigars as well as loss to petitioner, and misuse of the word "Havana" might have developed a secondary meaning in connection with manufacturer's cigars.

A "Havana cigar" is one made from Cuban tobacco, which is world famous for its aroma and makes the finest of all cigars.

(Syllabus, with substituted captions, is taken from 106 F. (2d) 596)

On petition to review and modify order of Commission, Order modified, and enforced as modified.

Messrs. John Walsh and *Louis A. Spiess*, both of Washington, D. C., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr Martin A. Morrison*, assistant chief counsel, and *Messrs. DeWitt T. Puckett* and *James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before BIGGS, MARIS, and CLARK, Circuit Judges.

CLARK, *Circuit Judge:*

The "harmless drudges" (as Dr. Johnson defined them) who have busied themselves "in tracing the original, and detailing the signification of words," are in agreement that a "Havana" cigar is one made from Cuban tobacco, New Century Dictionary, vol. 1, page 719; Webster's Universal Dictionary (1936) page 772. Such, too, is the understanding of the trade, Tobacco Manual, page 19, and we are told:

"The tobacco leaf of Cuba is world famous for its aroma and makes the finest of all cigars." The Wide Realm of Lady Nicotine, 8 Compton's Encyclopedia, page 3509.

Hence, the implicit misrepresentation in selling Cuban tobacco-less cigars under the label "Havana" hardly merits comment. The judicial reaction to that practice may be observed in two fields: Suits for trade-mark infringement, and the review of orders by an administrative agency pledged to extirpate "unfair methods of competition," 15 U. S. C. A., section 45. It has met with unanimous condemnation in both.

The doctrine of unclean hands as applied to the protection of trade-marks and names has been thoroughly elucidated in the text-books and law reviews, Derenberg, Trade-Mark Protection and Unfair Trade, pages 659 et seq.; Nims, Unfair Competition and Trade-Mark (third edition) pages 977 et seq.; 31 Harvard Law Review 889 (note); 21 Yale Law Journal 426 (note); 15 Yale Law Journal 309 (note); 32 Halsbury's Laws of England, pages 657–658. Suffice it to say that misrepresentation as to ingredients, *Worden & Co.* v. *California Fig Syrup Co.* ("fig syrup" without figs), 187 U. S. 516, and as to the place and manner of manufacture, *Manhattan Medicine Co.* v. *Wood*, 108 U. S. 218 (Moses Atwood, of Georgetown, Mass., for Manhattan Medicine Company, N. Y.), *Kosofsky* v. *Silbert*, 123 Misc. (N. Y.) 638 (Hudson Bay Fur Co. without furs from Hudson Bay), have prevented the traders who used them from securing equitable relief. As [597] early as 1867 the Supreme Court of Pennsylvania (wherein is situated Constatoga, birthplace of the stogy) invoked the doctrine in connection with domestic cigars mislabeled "Havana." Not even deigning to stress the misdescription of ingredients, the learned court described that practice as:

"* * * a falsehood as to the place where his goods are manufactured in order to have the benefit of the reputation which such goods have acquired in the market." *Palmer* v. *Harris*, 60 Pa. 156, 158.

Other courts followed suit, *Newman* v. *Pinto*, 4 R. P. C. 508; *Solis Cigar Co.* v. *Pozo*, 16 Colo. 388.

The work of the Federal Trade Commission has been along similar lines, Derenberg, Trade-Mark Protection and Unfair Competition, pages 190 et seq.; Henderson, The Federal Trade Commission, page 182. Here the public has been protected, affirmatively rather than negatively, from misrepresentation of ingredients, *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483 ("natural wool" for cotton); *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67 ("California white pine" for yellow pine); *Procter & Gamble* v. *Federal Trade Commission*, 11 F. (2d) 47 ("Naptha soap" without naptha); *Masland Duraleather Co.* v. *Federal Trade Commission*, 34 F. (2d) 733 ("Duraleather" without leather); and of the place and method of manufacture, *Federal Trade Commission* v. *Bradley*, 31 F. (2d) 569 ("English tub soap" made in America); *Lighthouse Rug Co.* v. *Federal Trade Commission*, 35 F. (2d) 163 ("Lighthouse" rugs not made by blind men). By the same token, the Commission will not countenance "Havana," "Cuban," "Tampa," and "Wheeling" cigars which are geographically or analytically unworthy of the name. See 105 Commerce Clearing House Trade Regulation Service,

section 505.4465–75; 106 Commerce Clearing House Trade Regulation Service, sections 9100, 9745.

Accordingly, the petitioner, a Pennsylvania manufacturer of cigars which contain only Pennsylvania tobacco, but are branded "Havana Smokers," has been ordered to cease and desist from using the word "Havana" to designate its product. We are asked to modify this order so as to permit the retention of the word "Havana" with an appropriate "qualification," i. e., the legend:

"NOTICE
THESE CIGARS
ARE MADE IN
THE UNITED
STATES AND
ONLY OF UNITED
STATES TOBACCO"

The difficulty of petitioner's position lies in the fact that the implication of the word "Havana" is totally false. The purchaser can be guided by either label or legend, but not by both. This circumstance came before the Court of Appeals for the District of Columbia in a recent case. After a carefully considered review of the authorities the learned court concluded:

"* * * But the phrase 'Army and Navy' in the name 'Army and Navy Trading Company' makes the single representation that at least the major portion of the merchandise offered for sale is in some sense Army and Navy goods. This single representation being untrue, it cannot be qualified; it can only be contradicted. The cases urged by the Trading Company and above discussed justify qualification of a trade name where qualification is possible; they do not justify contradiction." *Federal Trade Commission* v. *Army and Navy Trading Co.*, 88 F. (2d) 776, 780.

We doubt if petitioner would accede to a true qualification—"Fake Havana Smokers."

It appears, however, that the cigars in question have been branded "Havana Smokers" since 1902. This, we think, calls two mitigating factors into play. First, the sudden elimination of the word "Havana" might cause confusion, or even consternation, among the devotees of petitioner's cigars, as well as substantial loss to petitioner, cf. *Masland Duraleather Co.* v. *Federal Trade Commission*, 34 F. (2d) 733. Second, it is possible, although the point is not reflected in the findings of the Commission, that the long misuse of the word "Havana" has lent that term a species of secondary meaning in connection with petitioner's cigars. See Notz, Unfair Commercial Practices in International Trade, 23 Bulletin of American Trade-Mark Association (New Series) 79. Courts of equity now tend to take this fact into

account before applying the doctrine of unclean hands in the manner above referred to. As a leading text writer has put it:

"They are now chiefly concerned with whether in the case of particularly well-known marks and names, the public has become accustomed to associate a product with a definite taste, appearance, smell, etc., without in the least being deceived by a product which does not contain exactly what it professes to, but which is the identical article which had previously satisfied them." Derenberg, [598] Trade-Mark Protection and Unfair Trading, page 670.

See *Coca-Cola Co.* v. *Koke*, 254 U. S. 143; *Le Blume Import Co.* v. *Coty*, 293 Fed. 344.

We feel that these considerations, although without bearing on the propriety of the Commission's order, may well influence the method whereby it is to be enforced. As a consequence, petitioner will be allowed two years within which to eliminate the word "Havana" as prescribed in our recent decree in *Bayuk Cigars, Inc.* v. *Federal Trade Commission* [106 Commerce Clearing House Trade Regulation Service, sec. 25290, and see 14 Federal Trade Commission Reports 708].

The order of the Federal Trade Commission is modified in accordance with the views set forth in this opinion and its enforcement as so modified will be decreed.

OSTLER CANDY COMPANY, GLADE CANDY COMPANY, AND SHUPE-WILLIAMS CANDY COMPANY v. FEDERAL TRADE COMMISSION.[1]

Nos. 1786, 1787, 1788

(Circuit Court of Appeals, Tenth Circuit. August 30, 1939)

FEDERAL TRADE COMMISSION ACT—SECTION 5—CEASE AND DESIST ORDERS—FINALITY ON EXPIRATION ALLOWED TIME—DUE PROCESS—AS LEGISLATIVE OR VESTING JUDICIAL POWER.

The statute authorizing Federal Trade Commission to prevent use of unfair methods of competition in interstate commerce, by entry of cease and desist order as amended by provision that order shall become final on expiration of time allowed for filing of petition for review, is not unconstitutional as denial of due process or as vesting judicial power in the commission, since change provided by amendment relates solely to remedy of government for enforcement of order and does not transform order into equivalent of legislative act or judgment or decree of court, and provision for judicial review meets requirements of due process. Federal Trade Commission Act, section 5, as amended March 21, 1938, 15 U. S. C. A., section 45.

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[1] Reported in 106 F. (2d) 962. Cases before Commission reported in 27 F. T. C. 668, 680 and 656, respectively.

UNFAIR METHODS OF COMPETITION—PROCEEDINGS IN RESTRAINT OF—INITIATION OF PROCEEDINGS—COMMISSION PREREQUISITES—USE AND PUBLIC INTEREST.

In order to initiate statutory proceeding to restrain unfair competition, Federal Trade Commission must first ascertain that an unfair method of competition in commerce has been used or is being used, and, if so, that a proceeding would be in the interest of the public.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—INITIATION UNFAIR METHODS COMPETITION PROCEEDING—INITIAL DETERMINATION OF COMMISSION *re* USE AND PUBLIC INTEREST—JUDICIAL REVIEW—COMPLAINT FILING AS BEGINNING OF.

On petition to review cease and desist order entered by Federal Trade Commission, court cannot inquire into quantum or sufficiency of factual information on which commission made initial determination that an unfair method of competition was being used and that a proceeding would be in the public interest, since such determination is a matter for the commission, and, where commission acts on some information, scope of judicial review begins with filing of complaint.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—COMPETITIVE PREREQUISITE—LOTTERY MERCHANDISING—CANDY—WHETHER CHANCE IN COMPETITION WITH STRAIGHT.

The Circuit Court of Appeals would not set aside order of Federal Trade Commission directing candy manufacturers and distributors to cease and desist from sale and distribution of candy assortments involving lot or chance features generally called "chance candy" on ground that commission was without jurisdiction because no unfair method of competition existed, in that "chance candy" was not sold at retail in competition with "straight candy" or assortments without lot or chance features, where correspondence which passed between commission and companies showed clearly that commission was thoroughly conversant with material facts.

UNFAIR METHODS OF COMPETITION—PUBLIC POLICY—LOTTERY MERCHANDISING.

The statute declaring unlawful unfair methods of competition in commerce condemns any method of competition in interstate commerce which is contrary to public policy, and interdicts any system of competitive merchandising in such commerce which uses or employs a "lottery," "gaming device," or "gift device," including push cards and punchboards.

UNFAIR METHODS OF COMPETITION—PROCEEDINGS IN RESTRAINT OF—WHERE COMPETITION, AS PROCEEDING DEVELOPED, NON-EXISTENT.

The essence of a proceeding by the Federal Trade Commission to restrain unfair competition is the forbidding of the continued use of an unfair trade practice in commerce in competition with others, and hence, where it appears in the course of such a proceeding that competition does not exist, the proceeding should be dismissed.

FINDINGS OF COMMISSION—LOTTERY MERCHANDISING—CANDY—COMPETITIVE SALE AT RETAIL OF CHANCE AND STRAIGHT GOODS—WHERE FINDING OF SUPPORTED BY SUBSTANTIAL EVEDENCE—COURT LIMITATION.

In proceeding to restrain candy manufacturers from sale and distribution of candy assortments involving lot or chance features, finding of Federal Trade Commission that sale and distribution of such candy in commerce and its sale at retail [963] came into competition with assort-

ments of candy without lot or chance features was conclusive on review if supported by substantial evidence.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—COMPETITIVE PREREQUISITE—LOTTERY MERCHANDISING—CANDY—WHETHER CHANCE IN COMPETITION WITH STRAIGHT—WHERE RETAIL SALE OF CHANCE AND STRAIGHT COMPETITIVE.

The Circuit Court of Appeals would not set aside orders entered by Federal Trade Commission requiring candy manufacturers to cease and desist from sale and distribution of candy assortments involving lot or chance features on ground that proceeding should have been dismissed for reason that sale of such candy at retail did not constitute competition with sale of candy which did not involve lot or chance features, where finding of commission that sale and distribution of chance candy in commerce and its sale at retail did come into competition with that of candy without lot or chance features was supported by adequate evidence.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—SCOPE AND EFFECT OF ORDER—COMPLAINT'S ALLEGATIONS AND FINDINGS AS CONSTRUED FOR.

Cease and desist orders entered by Federal Trade Commission in proceeding to restrain unfair competition were required to be construed in the light of the allegations contained in the complaint and the findings of the commission.

CEASE AND DESIST ORDERS—SCOPE AND EFFECT OF ORDER—LOTTERY MERCHANDISING—CANDY—PACKING, ETC., SO THAT SALES WERE TO BE OR MAY BE MADE BY MEANS OF LOTTERY, ETC., OR SUPPLYING, ETC., TO DEALERS, ETC., ASSORTMENTS WHICH ARE OR MAY BE USED, ETC., TO CONDUCT LOTTERY, ETC.

Cease and desist orders entered by Federal Trade Commission which forbade sale and distribution of candy so packed and assembled that sales were to be made or "may be made" by means of lottery, gaming device, or gift device, and prohibited supplying or placing in hands of dealers and jobbers assortments which are used or "may be used" without alteration or rearrangement of contents to conduct lottery, gaming device, or gift device, were not objectionably broad in scope and effect when construed in light of allegations of complaint and findings of commission.

(Syllabus, with substituted captions, is taken from 106 F. (2d) 962)

On petition to review orders of Commission, by Ostler Candy Co., by Glade Candy Co., and by Shupe-Williams Co. Petitions denied.

Mr. H. L. Mulliner, of Salt Lake City, Utah, (*Messrs. J. R. Mulliner* and *H. H. Halliday*, both of Salt Lake City, Utah, on the brief), for petitioners.

Mr. Martin A. Morrison, assistant chief counsel, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, *Mr. P. C. Kolinski* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., on the brief), for respondent.

Before PHILLIPS, BRATTON, and HUXMAN, Circuit Judges.

BRATTON, *Circuit Judge:*

Ostler Candy Co., Glade Candy Co., and Shupe-Williams Candy Co., each engaged in the manufacture of candy in the State of Utah and in the sale and distribution of it in intrastate and interstate commerce, seek to have reviewed and set aside orders of the Federal Trade Commission entered under the provisions of section 5 of the Federal Trade Commission Act, 15 U. S. C. A. 45, separately requiring them to cease and desist from certain trade practices which were found to constitute unfair competition in commerce. The proceedings are here on separate petitions to review, but the material facts are substantially alike and the questions presented are identical.

The Commission found in each proceeding that the company was in active competition with others engaged in the manufacture of candy and in the sale and distribution of it in interstate commerce; that several of its assortments of candy are composed of bars of candy, together with a device commonly called a "push card"; that the push card has partially perforated discs which are effectively concealed; that when a push is made and the disc separated from the card a number or legend is disclosed; that sales are 5 cents each; that the card bears a statement informing prospective and actual customers that each number or legend pushed entitles the person pushing it to receive one bar of candy but that certain numbers entitle the persons pushing them to one or more additional bars; that the card also bears a legend stating that the person making the last push will receive a specified number of [964] additional bars; that the company also distributes assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punchboard"; that the punchboard has a number of holes in which slips of paper containing numbers are secreted; that when a punch is made and the slip separated from the board the number is disclosed; that punches are 5 cents each; that the board has printed thereon statements or legends informing prospective and actual purchasers that those punching certain numbers are entitled to specified packages of candy; that the packages of candy are distributed in accordance with such statements or legends; that candy assortments involving such lot or chance features are generally called "chance candy" and that assortments without the lot or chance features are called "straight goods"; that the company sells its chance candy to jobbers and retailers; that the jobbers resell to retailers; that the retailers display it for sale as packed by the company and it is sold to the consuming public in accordance with the sales plans of the company; that such candy is so packed and assembled as to involve and is designed to involve the use of a lottery scheme when sold and distributed to the consumers thereof; that the sale and distribution of chance candy

through such methods constitutes a lottery or gaming device which is contrary to public policy, as morally bad and encouraging gambling, as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating public policy and the laws of the several States; that it is injurious and prejudicial to the public and to the competitors of the company; and that it is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

Each order requires the company in the sale and distribution of candy in interstate commerce, to cease and desist (1) from selling and distributing to wholesale dealers and jobbers, for resale to retail dealers direct, candy so packed and assembled that sales to the public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise, (2) from supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy 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 candy contained in such assortments to the public, (3) from supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy, together with a push board or punchboard for use, or which may be used, in distributing or selling such candy to the public at retail, and (4) from furnishing to retail and wholesale dealers and jobbers push cards or punchboards, either with packages or assortments of candy or separately, bearing a legend or statement informing the purchasing 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.

The constitutionality of section 5 of the statute, as amended by the act of March 21, 1938, 52 Stat. 111, is challenged. It is argued that the amendment gives to an order to cease and desist from a trade practice the full force and effect of a judgment or decree of a court, thus vesting judicial power in the Commission. The amendment provides that the order shall become final upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been filed within that time. The change relates solely to the remedy of the Government for its enforcement; it does not transform the order into the equivalent of a legislative act or a judgment or decree of a court; and the provision for judicial review meets the requirements of due process. The statute is not open to attack for want of constitutional validity. *National Candy Co.* v. *Federal Trade Commission*, 104 F. (2d) 999.

The jurisdiction of the Commission is attacked. The contention is that as a prerequisite to jurisdiction to issue a complaint,

the Commission must first determine whether there is reason to believe that one has been or is using an unfair method of competition in interstate commerce; that after determining such question in the affirmative the Commission cannot proceed unless it further appears that the proceeding would be in the interest of the public; and that the Commission did not acquire jurisdiction here because no unfair method of competition existed in that chance candy is not sold at retail in competition with straight candy. It is well settled that in [965] order to initiate such a proceeding the Commission must first ascertain that an unfair method of competition in commerce has been or is being used, and, if so, that a proceeding would be in the interest of the public. *Federal Trade Commission* v. *Raladam Company*, 283 U. S. 643. But here the correspondence passing between the Commission and the companies shows clearly that the Commission was thoroughly conversant with the material facts bearing upon the manner in which the chance candy was packed, distributed, and ultimately sold at retail to the consuming public. A further investigation would have been idle and useless. A court on petition to review a cease and desist order cannot inquire into the quantum or sufficiency of the factual information on which the Commission made its initial determination that an unfair method of competition was being used and that a proceeding would be in the public interest. That is a matter for the Commission. Where the Commission acts on some information, the scope of judicial review begins with the filing of the complaint. We do not explore the question whether a cease and desist order may be attacked on review for want of any evidence on which the Commission made its initial determination as no such situation is presented.

The statute condemns any method of competition in interstate commerce which is contrary to public policy, *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441; *Wholesale Grocers' Association* v. *Federal Trade Commission*, 277 F. 657; *Walter H. Johnson Candy Co.* v. *Federal Trade Commission*, 78 F. (2d) 717; it interdicts any system of competitive merchandising in such commerce which uses or employs a lottery, gaming device, or gift device, *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304; and pushcards and punchboards are within that class, *Hofeller* v. *Federal Trade Commission*, 82 F. (2d) 647; *Federal Trade Commission* v. *F. A. Martoccio Company*, 87 F. (2d) 561; *Federal Trade Commission* v. *Charles N. Miller Co.*, 97 F. (2d) 563; *Helen Ardelle, Inc.* v. *Federal Trade Commission*, 101 F. (2d) 718; *Bunte Bros.* v. *Federal Trade Commission*, 104 F. (2d) 996; *National Candy Co.* v. *Federal Trade Commission*, supra.

It is urged that the jurisdiction of the Commission is restricted to methods of competition as they affect competitors and the public;

that it has no independent police powers; and that these proceedings should have been dismissed for the reason that the sale of chance candy at retail does not constitute competition with the sale of straight candy. The essence of a proceeding of this kind is the forbidding of the continued use of an unfair trade practice in commerce in competition with others. It necessarily follows that where it appears in the course of such a proceeding that competition does not exist the proceeding should be dismissed. But the Commission found that the sale and distribution of chance candy in commerce and its sale at retail does comes into competition with that of straight candy; that it diverts trade in volume from business enterprises not using such methods; and that it is prejudicial to the public. That finding is conclusive on review if it is supported by substantial evidence. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67; *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112. It would not serve any useful purpose to detail the evidence at length. It suffices to say that there was substantial evidence to show that while generally there are differences in the types of customers for the two kinds of candy, the sale of chance candy does reduce the sale of straight candy. As the diversion of a substantial part of trade from straight candy to chance candy constitutes competition, the finding is supported by adequate evidence and therefore cannot be overthrown on review.

The remaining contention which merits consideration is that the orders are too broad. It is said that the first and second paragraphs are broad enough to include any candy which might be sold at retail through means of a lottery, gaming device, or gift device, even though the company did not intend or contemplate at the time of its sale and distribution to jobbers or retailers that it should be retailed through such methods; and that unless the orders are limited they will effectively forbid the sale and distribution in commerce of any candy whatsoever. The first paragraph forbids the sale and distribution [966] of candy so packed and assembled that sales are to be made, or may be made, by means of a lottery, gaming device, or gift device; and the second paragraph prohibits the supplying or placing in the hands of dealers and jobbers assortments which are used, or may be used, without alteration or rearrangement of the contents thereof to conduct a lottery, gaming device, or gift device in the sale or distribution of the candy contained therein. The Circuit Court of Appeals of the Seventh Circuit limited an order quite similar to these in a manner equivalent to striking from the first paragraph of these orders the words "or may be made," and from the second paragraph the words "or which may be used." *Federal Trade Commission* v. *McLean & Son*, 84 F. (2d) 910. The First Circuit took like action,

citing with approval and resting its decision upon the *McLean* case. *Federal Trade Commission* v. *Charles N. Miller Co.*, *supra.* The Ninth Circuit did likewise, citing both the *McLean* and the *Miller* cases. *Helen Ardelle, Inc.* v. *Federal Trade Commission*, *supra.* But the Seventh Circuit concluded in the recent case of *National Candy Co. v. Federal Trade Commission*, *supra*, that its action in the *McLean* case was not well founded. The court said that more deliberate consideration convinced it that the language of the order, in the light of the allegations of the complaint and the findings, could not reasonably be construed to have application to straight candy; that it applied only to candy which carried an unfair appeal to retail dealers and retail purchasers on account of the element of chance involved in the sale of it. Giving the order that construction, the court declined to restrict it. These orders must be construed in the light of the allegations contained in the complaint and the findings of the Commission. And when construed in that manner it is reasonably clear that the first and second paragraphs apply exclusively to candy which is so packed or arranged as to be especially suited to sale at retail in a manner which makes an unfair appeal to retail dealers and retail purchases on account of the element of chance involved, and to candy which is peculiarly adapted in some other manner to sale at retail by chance method. With these paragraphs thus construed, the orders are not objectionably broad in scope and effect.

The petitions to set aside the orders are severally denied.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 6734

(Circuit Court of Appeals, Third Circuit. September 22, 1939)

FINDINGS OF COMMISSION—WHERE SUPPORTING TESTIMONY.

The fact findings of the Federal Trade Commission, if supported by testimony, are conclusive.

FINDINGS OF COMMISSION—APPELLATE PROCEEDINGS OR PROCEDURE—EVIDENCE—WEIGHT.

The weight to be given to facts and circumstances admitted, and inferences reasonably to be drawn therefrom, are for Federal Trade Commission.

FINDINGS OF COMMISSION—APPELLATE PROCEEDINGS OR PROCEDURE—IN GENERAL.

Courts will not pick and choose bits of evidence to make findings of fact contrary to findings of Federal Trade Commission.

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[1] Reported in 106 F. (2d) 667. Petition for certiorari denied by Supreme Court, Jan. 2, 1940, 60 S. C. 380. Case before Commission reported in 26 F. T. C. 486.

FINDINGS OF COMMISSION—APPELLATE PROCEEDINGS OR PROCEDURE—REVIEW SCOPE OF COURT'S DUTY.

The duty of the Circuit Court of Appeals in examining findings of fact of Federal Trade Commission is to ascertain whether such findings have support in the record before the commission.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS.

The statute relating to payment or acceptance of commissions, brokerage, or other compensation absolutely prohibits the payment of brokerage or compensation in lieu thereof to buyer, or buyer's representatives or agents. 15 U. S. C. A. sec. 13 (c).

STATUTORY CONSTRUCTION—EXCEPTIONS—RULE OF STRICT CONSTRUCTION.

Exceptions contained in statutes are to be construed strictly.

AGENCY—DUAL REPRESENTATION OR SERVICE—WHERE FULL DISCLOSURE.

[668] The common law did not prohibit agents serving in dual capacity if status of dual agency was disclosed fully.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SERVICES RENDERED EXCEPTION—BONA FIDE BROKERAGE PAYMENTS FOR SERVICE TO PRINCIPAL, AND PURPORTED DUAL BUYER-SELLER REPRESENTATION—AS RESPECTIVELY PERMITTING AND PROHIBITING.

The words "except for services rendered," in statute prohibiting payment or acceptance of commissions, brokerage, or other compensation "except for services rendered," permitted bona fide brokerage for actual services rendered to principal by agent, but prevented dual representation by agents purporting to deal on behalf of both buyer and seller.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—WHERE INCIDENTAL SELLER SERVICES BY BUYER FIELD AGENTS OF CHAIN STORE.

Under statute prohibiting payment or acceptance of commissions, brokerage, or other compensation, operator of chain of retail grocery stores buying through field agents was not entitled to allowances or discounts from sellers in lieu of brokerage, notwithstanding that agents rendered incidental services to sellers.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—IN GENERAL.

The statute relating to discrimination in price, services, or facilities was intended to prevent price discriminations having a prejudicial effect on competition or which tended to lead to monopoly. 15 U. S. C. A. sec. 13.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—CONSTRUCTION—SCOPE AND PURPOSE.

The portion of price-discrimination statute prohibiting payment or acceptance of commission, brokerage, or other compensation must be construed in the light of the whole statute and the evils which the whole statute was intended to remedy.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A) AND (C)—COST DIFFERENTIAL AND BROKERAGE OF COMMISSION PROVISIONS OF RESPECTIVE PROHIBITIONS.

The cost-differential provision in statute prohibiting discriminations in price between customers did not permit net prices, allowances, and dis-

counts to be passed on to buyers in view of statute prohibiting payment or receipt of commissions, brokerage or other compensation. 15 U. S. C. A., sec. 13 (a, c).

INTERSTATE COMMERCE—CONGRESS POWER—SCOPE.

The power of Congress to regulate commerce is the power to enact all appropriate legislation for protection and advancement of commerce and to adopt measures to promote growth and insure safety of commerce, and to foster, protect, and control commerce. U. S. C. A. Const. art. 1, sec. 8, cl. 3.

CONSTITUTIONAL LAW—STATUTES—JUDICIAL LIMITATIONS—POLICY OF LAW-MAKING BODY.

Courts should not inquire into the policy of the lawmaking body.

CONSTITUTIONAL LAW—STATUTES—LEGISLATIVE DETERMINATIONS ON FACTS—WHERE FAIRLY OPEN TO DIFFERENCE OF OPINION—AS CONCLUSIVE.

In determination of constitutionality of statutes, the legislative determination of what the facts establish is conclusive, where the question of what the facts establish may be regarded as fairly open to differences of opinion.

CONSTITUTIONAL LAW—FIFTH AMENDMENT—INTERSTATE COMMERCE—POWER OF CONGRESS.

The Fifth Amendment to Constitution does not prohibit exercise by Congress of its power under commerce clause. U. S. C. A. Const. art. 1, sec. 8, cl. 3; Amend. 5.

CONSTITUTIONAL LAW—FIFTH AMENDMENT—INTERSTATE COMMERCE—POWER OF CONGRESS—LIBERTY OF CONTRACT.

Liberty of contract may be limited by exercise by Congress of its power under commerce clause of Constitution.

INTERSTATE COMMERCE—CONGRESS POWER—SCOPE—PROHIBITIONS IN AID OF COMPETITION—SPECIFIC EFFECTS IN PARTICULAR INSTANCES AS NOT DELIMITING POWER TO PROCEED GENERALLY WITHIN CONSTITUTIONAL BOUNDARIES TO OUTLAW, AS HURTFUL, CERTAIN ACTS.

Congress is not prohibited to limit the exercise of its power under commerce clause of Federal Constitution upon the effect of forbidden acts in particular instances, but can proceed generally for protection of commerce in general, expressing its disfavor of certain acts as hurtful to competition in such terms as it sees fit so long as it does not transgress the boundaries imposed by Constitution.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—VALIDITY OF PROHIBITION.

The statute prohibiting payment or receipt of commissions, brokerage, or other compensation was proper exercise of commerce power of Congress, where Congress found that practice of paying brokerage, or sums in lieu thereof, to buyers or their agents by sellers, was an unfair trade practice resulting in damage to commerce.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—ENFORCEMENT—WHERE AFFIRMANCE.

The Circuit Court of Appeals would command a corporation to obey Federal Trade Commission's cease and desist order which court affirmed. 15 U. S. C. A. sec. 45.

(Syllabus, with substituted captions, is taken from 106 F. (2d) 667)

[669] On petition for review of an order of Commission requiring petitioner to cease and desist from certain alleged violations of Robinson-Patman Act, decree affirming order and commanding obedience thereto.

Mr. Caruthers Ewing, of New York City (Watson, King & Brode and Feldman & Kittelle, all of Washington, D. C., of counsel), for petitioner.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, and *Messrs. Joseph J. Smith, Jr.*, *Wilbur N. Baughman*, and *John Darsey*, all of Washington, D. C., special attorneys, for respondent.

Before BIGGS and MARIS, Circuit Judges, and KALODNER, District Judge.

BIGGS, *Circuit Judge:*

The petitioner, The Great Atlantic & Pacific Tea Co., seeks to have this court set aside an order of the Federal Trade Commission entered on January 25, 1938, requiring the petitioner to cease and desist from certain alleged violations of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, Act of June 19, 1936, c. 592, 49 Stat. 1526 (15 U. S. C. A. 13 (c)). The order referred to is set out as an appendix to this opinion.

The petitioner relies on three assignments of error. These are as follows: (1) that the Commission erred in finding that "No brokerage or selling services whatsoever, or any other form of services in connection with the purchase of supplies 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"; (2) that the Commission erred as a matter of law in holding that the petitioner is not entitled to an allowance or discount reflecting alleged savings to sellers of brokerage or services in lieu of brokerage; and (3) that the Commission erred in finding "* * * 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".

Since questions of fact as well as law are presented for our consideration, we will deal first with the facts. There is no doubt, as this court stated in *Federal Trade Commission* v. *Artloom Corporation*, 69 F. (2d) 36, 37, 38, that "The fact findings of the Commission, if supported by testimony, shall be conclusive." See *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73; *Federal*

Trade Commission v. *Standard Education Society*, 302 U. S. 112, 117, and *Minter* v. *Federal Trade Commission*, 102 F. (2d) 69, 70. It is also the law that the "* * * weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn" from such facts and circumstances are for the Commission, *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63, and that courts will not "* * * pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission," *Federal Trade Commission* v. *Standard Education Society*, supra, at p. 117. The duty of this court, therefore, in examining the findings of fact of the Commission is to ascertain whether or not such findings have support in the record before the Commission.

The Facts

The petitioner is engaged in the retail grocery business and in conjunction with its affiliates operates more than 14,800 retail grocery stores located throughout the United States. Naturally, it competes with other chain grocery stores and with individuals or corporations operating grocery stores locally within the areas where the petitioner does business. The petitioner has divided the country into six geographical divisions. Each division in turn is divided into a number of units. Each unit contains a warehouse. Each division has a purchasing director. Each warehouse also employs a purchasing director or buyer. The purchasing directors and the warehouse buyers have the authority to purchase the commodities and products required by the petitioner to maintain its many stores.

In addition to the foregoing, the petitioner maintains a number of central buy[670]ing offices. These are located in key cities, as, for example, in New Orleans, Baltimore and San Francisco. These central buying offices are in charge of agents of the petitioner. The salaries of these agents are paid by the petitioner as are the expenses of maintaining the offices. The Commission found as a fact that the duties of these agents consist of continuously searching for and finding sources of supply for the petitioner's stores, of furnishing the petitioner with market information, and of purchasing commodities for the petitioner.[1] The field buyers have no authority to make purchases except upon the instructions of the purchasing directors and the warehouse buyers. The field buyers are constantly in touch with these offices however. The Commission also found as a fact that prior to June 19, 1936, the petitioner designated these agents as "brokers"; next referred to them as "purchasing agents"; next as "field buying agents" or simply as "buyers."[2] They are in fact field

[1] Par. 5 of the Findings of Fact.
[2] Par. 6 of the Findings of Fact.

contact men who are and remain in touch with sellers and prospective sellers of commodities. Their duties in no wise changed with their change of name.

It is in respect to the duties, obligations and labors of these buyers or field buying agents that the controversy at bar arises. The petitioner points out that the field buyers furnish sellers with certain services. For example, the record shows that they exchange information as to market conditions with sellers. They visit manufacturing establishments and advise managers as to methods whereby the quality of commodities may be improved. They also advise manufacturers as to the sizes of containers. They furnish sellers with traffic information as to the routing of commodities purchased by the petitioner. When sellers are threatened with a glut of commodities which may break the market, the field buying agents call the existence of such conditions to the attention of the divisional purchasing directors who endeavor to relieve the glut by buying commodities.

The petitioner contends that these services are of great value and exceed those customarily rendered by brokers, and takes the position that these field buying agents "perform substantially the same services and functions as a broker, namely, to bring buyer and seller together; to act as intermediary and to serve both" and that sellers did not sell "to the field man but *through* him, and that, in consequence, their sales to the petitioner were not *direct* sales."[3] The petitioner also contends that one of the outstanding services rendered by the field buying agents is in preventing sellers from selling their products or commodities at too low a price. The Commission found as a fact, however, that "the loyalty and allegiance" of the 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."[4]

It is clear that prior to June 19, 1936, the effective date of the Robinson-Patman Act, the sellers paid brokerage to the field buying agents of the petitioner in the same amounts as were paid by the sellers to brokers acting as agents for such sellers. Such brokerage was received by the field buying agents on behalf of the petitioner and was paid by them to the petitioner.

Within a comparatively short time after June 19, 1936, the petitioner issued new instructions to its field buying agents. These instructions provided that the field buyers should accept no further

[3] Petitioner's brief, at p. 10.
[4] Par. 9 of the Findings of Fact.

brokerage from the sellers on purchases of commodities and should make all future purchases for the petitioner on one of three bases. These bases required the field buying agents to adopt one of the following methods in dealing with sellers: (1) to purchase commodities and products for the petitioner for a net price which was to reflect a reduction from the sellers' prices to other customers or from the general market price, this reduction reflecting in amounts brokerage paid by the sellers to the field buying agents of the petitioner prior to June 19, 1936, being also amounts equivalent to amounts currently paid by the sellers to brokers; (2) to execute "quantity discount agreements" with the sellers, these agreements providing for payment to the petitioner monthly as a "quantity discount" an amount equal to the brokerage paid **[671]** monthly by the sellers to the field buying agents prior to June 19, 1936; and (3) if the sellers were unwilling to sell on the conditions imposed by (1) and (2) above, to make an agreement with sellers whereby the sellers were to keep a record of the brokerage which they would have paid to the field buying agents prior to June 19, 1936 and to pay into escrow or to set up in "abeyance accounts" on their books sums equivalent to such brokerage until the legality of making payments covering such amounts should be determined in the light of the Robinson-Patman Act.

The record shows the purchase by the petitioner of commodities in interstate commerce on each of the three bases enumerated. In respect to basis (2), supra, it also appears that some agreements were made to operate retroactively from the dates of execution to June 19, 1936. It further appears that while the quantity discount agreements purported to require the petitioner to purchase specified quantities of commodities in order that the discount might be earned, there is evidence that the petitioner received discounts whether the quantity purchasing provisions of the contracts were fulfilled or not.[5]

Other findings of fact of the Commission must be referred to briefly. The Commission found that from the net prices at which the field buying agents purchased commodities for the petitioner subsequent to June 19, 1936, the field agents deducted from the sellers' current prices to their customers an amount equal to the brokerage which would have been paid to the field buying agents by the sellers prior to the passage of the Robinson-Patman Amendment. As to purchases under the quantity discount agreements, the amounts of the discounts were paid by the sellers to the petitioner. These amounts were substantially equivalent to the sums paid by

[5] Par. 14 of the Findings of Fact.

these sellers to the field buying agents prior to June 19, 1936.[6] In respect to purchases not made for net prices or under quantity discount agreements, petitioner required the sellers to pay the brokerage into escrow or set up abeyance accounts made by the field buying agents for the petitioner.[7] The net prices at which the field buying agents purchased commodities for the petitioner did not precisely reflect exact amounts of brokerage because such would result frequently in a sale price involving fractions, contrary to the usages of the trade. The Commission found as a fact that the petitioner "instructed its 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."[8] The Commission also found that with "extremely few exceptions" the petitioner was the only customer of such sellers to whom such sellers sold commodities upon the bases indicated above.[9]

The Commission also found that when the field buyers purchased commodities from sellers brokerage services were neither used nor invoked by either the sellers or the petitioner; that the sellers did not receive the benefit of brokerage services, but that nonetheless the petitioner "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."[10] The Commission also found that when services are performed by brokers representing sellers, viz, finding customers for such sellers, brokers act under the control of the sellers and sell commodities to the customers for such sellers and that brokers' functions as selling agents and the services rendered by them are a selling service for those by whom they are employed.[11] The Commission also found that in all matters and transactions whereby the field buying agents purchased commodities for the petitioner or dealt with sellers in connection with the purchase of commodities, the services of the field buying agents were intended to be and were in fact rendered to the petitioner solely and that the field buying agents are subject to the sole control of the petitioner and do not represent or purport to represent themselves to be agents for the sellers nor ren[672]der any brokerage or selling service to the sellers.[12]

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[6] Par. 14 (b), 19, and 25, idem.
[7] Par. 14 (c) and 16, idem.
[8] Par. 17 of the Findings of Fact.
[9] Par. 18, idem.
[10] Par. 19, idem.
[11] Par. 21, idem.
[12] Pars. 22 and 23 of the Findings of Fact.

The Commission also found that subsequent to June 19, 1936, the petitioner purchased commodities through its field buying agents upon the bases indicated in (1) and (2) supra, and has received and accepted allowances and discounts in lieu of brokerage.[13]

Concluding its findings of fact the Commission states, "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".[14]

The petitioner takes the position that two issues of fact are presented by the pleadings. The first is whether or not the petitioner through its field buying agents rendered services to sellers in connection with the purchases of commodities by the petitioner. The second is whether or not the petitioner received net prices, allowances or discounts in lieu of or as the equivalent of brokerage resulting in discriminatory prices prohibited by the amendment.

As to the first question, it is the petitioner's position that the net prices, allowances and discounts received by the petitioner from the sellers as arranged by its field buying agents or sums now held in escrow or upon abeyance accounts upon the books of the sellers, were for services rendered by its field buying agents to such sellers. Therefore, says the petitioner, it is not within the prohibition of section (c) of the Amendment. The difficulty presented by the petitioner's position, however, is that the evidence in no wise supports its contention that the net prices, allowances, discounts, escrow sums or abeyance accounts received by or made available to the petitioner by the sellers were made available or paid to the petitioner because of

[13] Pars. 24 and 25, idem.
[14] Par. 26 of the Findings of Fact.

the alleged services rendered by its field buying agents to sellers. The great weight of the evidence indicates the contrary. The net prices, discounts and allowances received by the petitioner, the setting up of abeyance accounts and escrow sums for its benefit are nothing more than devices put into effect by the petitioner in attempted avoidance of the prohibitions of the Robinson-Patman Act. It would be fruitless to pursue this issue of fact further.

In respect to the second question, the petitioner contends that the net prices given to it by sellers were possible because of saving of brokerage; that in addition to brokerage other savings were effected to which the petitioner became entitled because of the contact maintained by the field buying agents with the sellers. The petitioner points out that the sellers were saved traveling expenses, salesmen's salaries and commissions, telephone and telegraph charges, the expense of correspondence with brokers and salesmen. Therefore, says the petitioner, the prices paid by it were not discriminatory, since reductions in price were paid for by valuable services. Inherent in these very arguments which the petitioner makes is the inescapable conclusion that the sums "saved" to the sellers allegedly because they were not compelled to pay brokers, were not saved to them at all, but were merely translated into another form to the financial benefit of the petitioner. In regard both to net prices and quantity discounts, the Commission found as a fact that "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 * * * were [673] 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 services were intended to be, or were, passed on by sellers to the Respondent or received by the Respondent from sellers.[15]

We entertain no doubt that the petitioner's receipts of net prices, allowance and discounts in lieu of brokerage injured competition.

In conclusion we state that we have carefully examined the findings of the Commission and the record. Not only are the findings of fact made by the Commission supported by the evidence, but we state as our opinion that the Commission properly could have reached no other conclusions than those expressed.

The Law

The petitioner presents three questions of law which it contends must be decided in its favor. We will deal with these questions in the order which seems most convenient.

[15] Paragraph 20 of the Findings of Fact.

Section 1 (c) of the Robinson-Patman Amendment 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."

1. Subsection (c) Contains an Absolute Prohibition of Payments or Allowances of Brokerage or Sums in Lieu of Brokerage From Sellers to Buyers

The petitioner contends that the "services rendered" clause of paragraph (c), supra, provides an exception to the prohibition expressed in the paragraph by reason of which "a comission, brokerage, or any allowance or discount in lieu thereof" may be paid lawfully to a buyer upon purchases made by him. We are of the contrary opinion and believe that paragraph (c) expresses an absolute prohibition of the payment of brokerage or compensation in lieu thereof to the buyer upon the buyer's own purchases. If the contention of the petitioner be accepted, all the words employed by Congress in the paragraph after the "services rendered" clause become meaningless and unnecessary. The Circuit Courts of Appeals for the Second and Fourth Circuits respectively have passed upon this question in the cases of *Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634, and *Oliver Bros.* v. *Federal Trade Commission*, 102 F. (2d) 763.

In the *Biddle case*, at page 691, the Court of Appeals of the Second Circuit states: "Congress must have intended that payments by sellers should not be made to buyers through any one acting as agent for the buyer * * * if buyers' agents or intermediaries are excepted for services rendered, so too are the buyers themselves. The intent of Congress must be recognized and 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 Committee 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."

In the Oliver case the Circuit Court of Appeals for the Fourth Circuit stated, "We come * * * to the * * * question * * * whether the brokerage commissions here involved come within the exception contained in Section 2 (c), i. e., are they paid for services rendered to the sellers? A sufficient answer to the question is found in the fact that the commissions are received by the buyers and not by Oliver, and that there can be no contention that any services are rendered by the buyers to justify the payment of compensation to them.

* * * "If (services rendered) were a sufficient basis to bring the allowance of the brokerage commissions within the exception of the section, every purchasing agent for a chain of stores might lawfully receive such commissions; for he does for the stores of his chain precisely what is done by Oliver for [674] the subscribers to its services and benefits the sellers in making sales in precisely the same way. We have no doubt that it was just this sort of thing that it was the purpose of the act to prevent.

* * * "Because of the buying power possessed by purchasing agents, whether representing chains or independent dealers, sellers may be willing to allow them brokerage commissions and may consider such commissions earned in the sense that the sellers are thus enabled to sell goods without resorting to other sales devices; but the fact remains that the buyer who receives the brokerage allowed his purchasing agent receives an advantage, and a concealed advantage, which the buyer who purchases directly from the dealer does not receive. It was this sort of discrimination, we think, which it was the purpose of this section of the act to forbid."

The facts of the *Biddle* and *Oliver* cases are very similar to those of the case at bar. In the *Biddle* and *Oliver* cases, the seller-respondents were required by the Commission to cease the payment of brokerage intended for transmission to the purchasing companies, and the Biddle and Oliver companies were required to cease accepting such brokerage. As we have stated, in the case at bar the petitioner contends that services of such a character were rendered by the petitioner's field buying agent to the sellers as to justify the payment of compensation to the petitioner. We have indicated heretofore our estimation of the true value of such services, but assuming them to be of the nature and character which the petitioner alleges, nonetheless and consideration received by the petitioner from the sellers on account of them is within the prohibition of the statute which is absolute.

We are required to give full effect to the words employed in the Amendment. We refer to House Report No. 2287, 74th Congress, second session, at page 3, and to the same report, at page 15. It is there stated that paragraph (c) "permits the payment of compensa-

tion 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 services rendered. It prohibits its allowance by the buyer direct to the seller or, the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary in fact for or in behalf, or subject to the direct or indirect control of the other.*" We have italicized the words of particular import in the language quoted. Language employed in Senate Report No. 1502, 74th Congress, second session, is to similar effect.

At each stage of its enactment, paragraph (c) was declared to be an absolute prohibition of the payment of brokerage to buyers or buyers' representatives or agents. Such is the plain intent of the Congress and thus we construe the statute. Any other result would frustrate the intent of Congress. Exceptions contained in statutes are to be construed strictly. *United States* v. *Scharton*, 285 U. S. 518, 521; *Spokane & Inland Empire R. Co.* v. *United States*, 241 U. S. 344; *Rochester Telephone Corp.* v. *United States*, 23 F. Supp. 634, affirmed 307 U. S. 125.

The petitioner takes the position that its field buying agents may act properly both as agents for the petitioner and for those that sell to it; that is to say, may serve both as the agents of the vendee and the vendors. The question presented, however, is not one of propriety of agents serving in dual capacity. Such a course was not prohibited by the common law if the status of the dual agency was disclosed fully. The question presented for our consideration is simply whether or not the vendee may be compensated for services rendered by the vendee's agent acting as agent for the vendors. It is obvious that dual representation by agents opens a wide field for fraud and oppression. Conflicting interests are always engaged when an attempt is made by buyers and sellers to arrive at a market price for commodities. We entertain no doubt that it was the intention of Congress to prevent dual representation by agents purporting to deal on behalf of both buyer and seller. For this reason paragraph (c) is framed by disjunctives. The edge of the paragraph cuts two ways, prohibiting the payment or receipt of commissions, discounts or brokerage to the adversary party by the other's agent. The phrase "except for services rendered" is employed by Congress to indicate that if there be compensation to an agent, it must be for bona fide brokerage, viz, for actual services rendered to his principal by the agent. The agent cannot serve two masters, simultaneously rendering services in an arm's [675] length transaction to both. While the phrase, "for services rendered", does not prohibit payment by the

seller to his broker for bona fide brokerage services, it requires that such service be rendered by the broker to the person who has engaged him. In short, a buying and selling service cannot be combined in one person.

Paragraph (c) was intended to effect and did effect a change in the law. Congress had ascertained that trade practices such as those employed by the petitioner prior to June 19, 1936 resulted in unfair competition. Prior to the passage of the Robinson-Patman Amendment the petitioner received brokerage in monthly installments from sellers. Following the amendment, the petitioner inaugurated the three methods heretofore referred to to avoid that which the Act forbade. As we have stated the attempted avoidance is unsuccessful. The record clearly requires the conclusion that the field buying agents of the petitioner were the agents of the petitioner and that such services as were rendered by them to sellers were purely incidental to such representative capacity. For such incidental services, the petitioner may not be compensated.

2. Paragraphs (a) and (c) Possess Separate Significance and Are Independent of Each Other

The petitioner contends that the Commission has treated paragraph (c) as a wholly independent statute which may not be construed in the light of the Amendment as a whole. What the Commission stated in respect to this issue is as follows: "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."

In its argument to this court and upon its brief, the petitioner states that it pleaded that if paragraph (c) of section 2 of the act "* * * was to be construed as standing alone and independent of any other provision of the act and as simply preventing parties from making a contract which had no relation to discriminatory prices, or without regard to any injurious effect on competition, it was unconstitutional."[16] Actually, however, the petitioner pleaded that paragraph (c) "* * * was unconstitutional and void, because * * * it deprives persons of the right to contract irrespective of the effect of such contracts on commerce and seeks to make

[16] Petitioner's brief, p. 2.

unlawful an agreement between persons with respect to the payment for services without regard to the effect on interstate commerce of such services * * *". The petitioner now contends, however, that net prices, allowances and discounts may be passed on to buyers under the cost differentials proviso in paragraph (a).[17]

[676] It would be well at this point we think to discuss briefly section 1 as a whole. Paragraph (a) deals with the selection of customers and provides that it shall be unlawful to discriminate in price between them. Then follow the cost differential provisos upon which the petitioner relies. Paragraph (b) provides that the burden of rebutting a prima facie case of discrimination rests upon the person charged with a violation of the section. Paragraph (c) prohibits the payment or acceptance of commission or brokerage or other compensation, except for services rendered, as we have indicated. Paragraph (d) provides that it shall be unlawful to pay or contract for the payment of anything of value for services or facilities unless such payment or consideration is available on proportionally equal terms to all other customers competing in distribution of such products or commodities. Paragraph (e) prohibits the furnishing of services or facilities for processing or handling upon terms not accorded to all purchasers on proportionally equal terms. Paragraph (f) prohibits persons from knowingly receiving a discrimination in price prohibited by section 13.

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[17] Par. (a) provides:

"(a) Price; selection of customers. It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and 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: *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: *Provided, however,* That the Federal Trade Commission may, after due investigation and bearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so [676] fixed and established: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further,* That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned."

Section 3 of the Robinson-Patman Act (15 U. S. C. A. 13a), to which the petitioner specifically refers, makes its unlawful "to be a party to, or assist in" a purchase or sale "which discriminates to his knowledge against competitors of the purchaser" by means of "any discount, rebate, allowance, or advertising service charge" not available to those in competition with such purchaser, or to sell at a lower price in one territory than another, or to sell at an unreasonably low price for the purpose of destroying competition or eliminating a competitor.

Relying upon the foregoing, the petitioner contends that the legislative intent was to prevent price discriminations having a prejudicial effect on competition or which tended to lead to monopoly. We are of the opinion that this was the intention of Congress and the act as a whole represents such legislative intent. We also conclude that paragraph (c) must be construed in the light of the act and the evils which the act was intended to remedy. The petitioner, however, takes the position that the language of paragraphs (a) and (c) is intended to be read together. If it be the case that the cost differentials provisos of paragraph (a) become part of and must be read into the language of paragraph (c), then it is obvious that the petitioner is entitled to the relief it seeks from this court for the complaint of the Commission against the petitioner in this case is based on the proposition that an offense prohibited by the act is made out by the petitioner's acceptance of allowances and discounts in lieu of brokerage. As the petitioner says, no other allegation is made. In other words, if the allowances and discounts in the case at bar be deemed to be permissible by reason of the cost differential provisos of paragraph (a), it is clear that the petitioner is entitled to have the cease and desist order of the Commission set aside.

This precise question was raised in the *Biddle case.* The Court there stated (p. 690):

"It is argued that section 2 (c), 15 U. S. C. A. § 13 (a), under which this proceeding is brought, is to be construed in the light of section 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 section 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 Company or the other petitioners for this reason. The complaint here is under the provisions of Section 2 (c) and not Section 2 (a) of the statute. The validity of the order entered is dependent entirely upon the legality of section 2 (c)."

A similar contention was made in the Oliver case. The court there stated (pp. 766, 767):

"The argument is made that the provi[677]sions of Section 2 (a) with respect to limitation of competition or tendency to create monopoly must be read into Section 2 (c) * * * Must the Robinson-Patman Act be so construed * * *? We think that (the question) must be answered in the negative.

"The Robinson-Patman Act * * * was an amendment of the Clayton Anti-Trust Act * * * section 2 of the Clayton Act, which was the section amended, merely forbade discrimination in price when the effect of such discrimination was to substantially lessen competition or tend to create monopoly. The Robinson-Patman Act broadened the scope of this provision, conferred upon the Federal Trade Commission power to establish quantity differentials * * * and cast the burden of proof upon one charged with discrimination to justify any discrimination shown. Receipt of price discrimination was made unlawful for the first time, section 2 (f) * * * and the three specific matters were forbidden as unfair trade practices by subsections (c), (d) and (e), viz: the granting of commission or brokerage, or any allowance in lieu thereof, to the other party to the transaction or his agent, the making of discriminatory payments by seller to buyer for services rendered by the latter and discrimination by the seller in the rendering of services to the buyer. It is perfectly clear that all three of these practices were forbidden because of their tendency to lessen competition and create monopoly, without regard to their effect in a particular case; and there is no reason to read into the sections forbidding them the limitations contained in section 2 (a) having relation to price discrimination, which is an extremely difficult matter to deal with and is condemned as unfair only in those cases where it has an effect in suppressing competition or in tending to create monopoly. The forbidding of specific practices because of their tendency toward a general result, also forbidden, is familiar legislative practice; and no reason suggests itself why the limitations and provisions relating to one should be read into those relating to the other."

We will state briefly our reasons for reaching a similar conclusion. An examination of paragraph (a) shows that it deals with discriminations in price generally. Paragraph (c) upon the other hand deals in particular with a trade practice which has frequently resulted in price discriminations and unfair competition. It is obvious that by its express language paragraph (c) must be applied only to transactions occurring in the course of interstate commerce. Paragraph (a) prohibits price discriminations "where either or any of the purchases involved in such discrimination are in commerce."

In this connection the House Committee[18] stated that the clause just quoted is of "first importance in extending the protections of this bill against the full evil of price discrimination, whether immediately in interstate or intrastate commerce, wherever it is of such a character as tends directly to burden or affect interstate commerce." Paragraph (a) is plainly directed toward price discrimination, no matter how arising, so long as it injures competition or affects the stream of commerce. Paragraph (c), upon the other hand, deals with one particular subject, viz, allowances and discounts in lieu of brokerage or brokerage of such nature and kind that commerce generally is affected thereby. In other words, paragraph (c) constitutes a specific prohibition of a specific act and the acts committed by the petitioner are within such prohibition. To read the words of paragraph (a) into paragraph (c) destroys the Congressional intent.[19] For example the language of paragraph (b) relates to proceedings brought pursuant to the provisions of paragraphs (a) and (e) but are not applicable to proceedings instituted under paragraphs (c) or (d). Thus viewed, the provisions of all the paragraphs of Section 2 are consistent and deal logically with their respective subjects. The respective paragraphs must be read with due regard for the provisions of each.

If Paragraph (c) be Construed as an Absolute Prohibition of Payment or Allowance of Brokerage or Sums in Lieu of Brokerage to Buyers, it is Nonetheless Constitutional

As was stated in *Texas & N. O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 570, the power of Congress "to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection or advancement' [678] * * * to adopt measures 'to promote its growth and insure its safety' * * * to 'foster, protect, control and restrain.'" The plenary power of Congress to such ends is subject solely to the limitations imposed by the Constitution. It is not the duty of the courts to inquire into the policy of the law making body. Congress determines the evil to be attacked and supplies the remedy. As was stated by the Supreme Court in *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corporation*, 299 U. S. 183, 196, if "the question may be regarded as fairly open to differences of opinion * * * the legislative determination * * * is conclusive."

The Fifth Amendment to the Constitution does not serve to prohibit the exercise by Congress of its power under the Commerce Clause. Liberty of contract may be so limited. *Tagg Brothers & Moorhead*

[18] H. Rpt. No. 2287, 74th Cong., 2d sess., at p. 8.
[19] S. Rept. No. 1502, 74th Cong., 2d Sess., at p. 5.

v. *United States*, 280 U. S. 420; *Chicago B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549; *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-op. Marketing Association*, 276 U. S. 71; *Highland* v. *Russell Car & Snow Plow Co.*, 279 U. S. 253; *O'Gorman & Young, Inc.*, v. *Hartford Fire Insurance Co.*, 282 U. S. 251; *Hardware Dealers Mutual Fire Ins. Co.* v. *Glidden*, 284 U. S. 151; *Nebbia* v. *New York*, 291 U. S. 502. Moreover, Congress is not required to limit the exercise of its power under the Commerce Clause upon the effect of forbidden acts in particular instances. It may proceed generally for the protection of commerce in general, expressing its disfavor of certain acts as hurtful to competition in such terms as it sees fit so long as it does not transgress the boundaries imposed by the Constitution. See *Reid* v. *Colorado*, 187 U. S. 137; *Champion* v. *Ames*, 188 U. S. 321; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *United States* v. *Delaware, L. & W. R. R. Co.*, 238 U. S. 516; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311; *Oregon-Washington R. & N. Co.* v. *Washington*, 270 U. S. 87; *Kentucky Whip & Collar Co.* v. *Illinois Central R. R. Co.*, 299 U. S. 334; *United States* v. *Carolene Products Co.*, 304 U. S. 144; *Mulford* v. *Smith*, 307 U. S. 38; *United States* v. *Swift & Co.*, 286 U. S. 106; *Electric Bond & Share Co.* v. *Securities & Exchange Commission*, 303 U. S. 419; *Central Elevator Co.* v. *People*, 174 Ill. 203 (1898); *Crescent Oil Co.* v. *Mississippi*, 257 U. S. 129; *Paramount Pictures* v. *Langer*, 23 F. Supp. 890.

The practice of paying brokerage, or sums in lieu of brokerage, to buyers or their agents by sellers was found by Congress to be an unfair trade practice resulting in damage to commerce. Paragraph (c) prohibits such practice. We conclude that Congress has properly exercised its power to the end that the named abuse may be done away with. We refer also to the conclusions expressed in the decision in the *Biddle* case, p. 692, and in the *Oliver* case, p. 769.

A decree will be entered affirming the Commission's order and commanding the petitioner to obey it. See 15 U. S. C. 45 as amended.

Appendix

ORDER TO CEASE AND DESIST

United States of America—Before Federal Trade Commission.

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 25th day of January, A. D., 1938.

Commissioners: Garland S. Ferguson, Jr., Chairman, Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

Docket No. 3031

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of The Great Atlantic & Pacific Tea Co., 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 [679] 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 Co., and to purchasers thereof other than the respondent, the said respondent, The Great Atlantic & Pacific Tea Co., 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 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 allow-

ances 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.

By the Commission.

OTIS B. JOHNSON,
Secretary.

CAPON WATER COMPANY, CAPON SPRINGS MINERAL WATER, INC., AND LOUIS L. AUSTIN v. FEDERAL TRADE COMMISSION [1]

No. 6798

(Circuit Court of Appeals, Third Circuit. October 9, 1939)

CEASE AND DESIST ORDERS—QUALITIES OR PROPERTIES OF PRODUCT—DRUGS AND MEDICINALS—MINERAL WATERS—CAPON SPRINGS.

An order of the Federal Trade Commission compelling distributors of mineral water to cut their advertisements to the testimony of their own physician experts and ordering distributors to cease and desist from representing directly or by implication that use of water alone either externally or internally would cure 52 named diseases ranging from nephritis to chronic pneumonia and from poison ivy to sterility was proper.

FEDERAL TRADE COMMISSION ACT—SECTION 5—APPELLATE PROCEEDINGS OF PROCEDURE—ORDERS OF COMMISSION—MODIFICATION.

[517] Under statutory authority to enforce or refuse to enforce orders of the Federal Trade Commission, the Circuit Court of Appeals may modify its orders. 15 U. S. C. A. sec. 45 (d).

(Syllabus, with substituted captions, is taken from 107 F. (2d) 516)

On petition to review and vacate cease and desist order of Commission, order affirmed.

Mr. Philip Austin, of Washington, D. C., and *Mr. Joseph W. Henderson*, of Philadelphia, Pa., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Messrs Edw. W.*

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[1] Reported in 107 F. (2d) 516. Case before Commission reported in 26 F. T. C. 423.

Thomerson and *James W. Nichol*, special attorneys, all of Washington, D. C., for respondent Federal Trade Commission.

Before MARIS, CLARK, and BIDDLE, Circuit Judges.

CLARK, *Circuit Judge:*

This is the second visit of this particular mineral water to this court. Although that fact seems to have been ignored by all counsel, a search of the Federal Digest, under appropriate headings, revealed it. In 1930 the United States libeled "94 Dozen, More or Less, Half-Gallon Bottles Capon Springs Water" then claimed by Capon Water Company, the predecessor in title of the present petitioner. On representation of different counsel the learned district judge was persuaded to dismiss the libel, *U. S.* v. *94 Dozen, More or Less, Half-Gallon Bottles Capon Springs Water*, 48 F. (2d) 378. The United States appealed but for some reason not disclosed did not bring up the 378 pages of testimony and our court accordingly sustained the dismissal, *U. S.* v. *94 Dozen, More or Less, Half-Gallon Bottles Capon Springs Water* (Capon Water Co., claimant), 51 F. (2d) 913. We have examined that testimony, a public record, and we must say that we think it is more satisfactory than that now before us.

We are sustaining the particular order of the Commission solely because of its limited scope. We are not constrained to and therefore do not pass upon the wider controversy implicit in the subject. The dispute over baniol therapeutics has raged in the medical profession and inevitably, therefore, in the courts, ever since the Romans began "taking the waters," Valentiner, Handbuch d. Balneo-therapie; Dictionnaire des eaux minerales, by MM. Durand-Fardel; I. Burney Yeo, The Therapeutics of Mineral Springs; W. E. Fitch, Mineral Waters of the United States and American Spas, the author, a witness in the principal case. As we understand, it still rages and should, we think, be legally, at least, put to rest by a properly prepared case. Because if these so-called mineral waters are not of any independent therapeutic value, the public should be protected against assertions otherwise. If, on the other hand, they do possess separate curative properties, their use and so their advertising should be encouraged.

The effect of the battle on the judicial laity is well illustrated in three opinions not cited but examined by us. The first is that of *U. S.* v. *Ninety-four Dozen Bottles C. S. Water*, supra, the second that of a distinguished Vice Chancellor of New Jersey, *Bear Lithia Springs Co.* v. *Great Bear Spring Co.*, 71 A. 383, and the third by a Justice of the Supreme Court of the District of Columbia. It will be noticed that in the second case one litigant complains of the lack of chemical analysis. We mention that because in the case at bar, the criticism is of reliance on such analysis and neglect of clinical

experience. One can not please everybody. Our own associate in the Federal judiciary expressed this opinion:

"Some of the literature put out by the claimants may be characterized as not only florid, but is almost laughable in its over statements. Every one has heard, however, of extravagant claims made by the advocates of a liberal use of ordinary drinking water. This is epitomized in the slogan 'flood your kidneys.' This has no reference to any particular drinking water, but applies to any water. All the extravagant claims made for drinking Capon Springs water are made for the liberal use of any drinking water. There is no reason to doubt that those who advocate the liberal use of drinking water honestly believe the practice to be beneficial. We are not prepared to make any finding that it is not, and we are far from finding that all the benefits claimed will be conferred. The point we have in mind to make is that the act of Congress does not interdict any one from advocating the liberal use of drinking [518] water nor from enforcing the advocacy of it by extravagant predictions of the benefits which will follow. If this can be done in the case of water as water, we do not see how the claimants can be interdicted from saying the same thing about Capon Springs Water." *U. S.* v. *Ninety-four Dozen Bottles C. S. Water*, 48 F. (2d) 378, 380–381.

The learned New Jersey equity judge, on the other hand, had these views:

"* * * The evidence shows, beyond doubt, that as long ago as 1893 the complainant's circular advertisements and all letterheads used by it contained the following representations referring to Bear Lithia Water: 'Nature's own remedy. Cures kidney and bladder troubles, uric acid, gout and rheumatism, phosphoric deposits, inflammation of the bladder, dropsical affections, brick dust deposits, gravel, and all forms of dyspepsia.'

"The complainant produced some witnesses as experts who had no experience in the use of the water, but their testimony proves nothing beyond the claim that from a chemical standpoint the analysis was not inconsistent with the possibility that the water might have a beneficial effect upon the diseases it was claimed it would cure. One of the witnesses gave it as his opinion that 'its mineralization does not preclude its being of medicinal value," and that the possibility would be enhanced if there was present a recently discovered agent, which he described as 'radio activity,' but there was no evidence that 'radio activity', was present in the water. The testimony of these experts as a display of learning is very interesting, but does not meet the question at issue, for none of the experts or physicians called by either side pretend that this water would cure any of the diseases named, except Dr. Smith, who did say that acute rheuma-

tism, resulting from a gouty affection, might be cured by the use of a proper remedy, and that such a result might be reasonably expected from the use of this water, but that it would cure rheumatism generally he did not assert.

"The credulity of a court cannot be expected to extend beyond a reasonable limit, and when testimony is given which is opposed to common knowledge and the experience of mankind, as well as reliable medical evidence hypothetical testimony which seeks to lead to a contrary result must be rejected as of no value. It is testimony, but not evidence. That this water will not cure the ills it is promised by the complainant that it will is in accord with the evidence in this cause and with common sense. There may have been isolated cases where the user supposed his recovery was aided, or perhaps produced, by the use of this water, for conditions may have existed in some cases which made it appear to the person benefited that it was the result of the use of this water, but that is the case with every quack medicine, as the numerous testimonials obtainable and published in such cases testify, but that this water will cure all the human ills it is advertised to do no sane person can for a moment believe." *Bear Lithia Springs Co.* v. *Great Bear Spring Co.*, 71 A. 383, 386–387.

So, also, this tribute from the District of Columbia:

" 'For a person to obtain a therapeutic dose of lithium by drinking Buffalo Lithia Water he would have to drink from one hundred and fifty thousand to two hundred and twenty-five thousand gallons of water per day. It was further testified, without contradiction, that Potomac River water contains five times as much lithium per gallon as the water in controversy.' " Judge Gould, *U. S.* v. *Buffalo Lithia Springs Water;* Cramp, Nostrums, and Quackery, page 466.

The Commission's order is surely the most gentle exercise of its power extant. It at most compelled the petitioners to cut their advertisements to the testimony of their own physician experts. They were ordered to cease and desist from "representing directly or by implication that the use of said water *alone* either externally or internally will *cure*" 52 named diseases ranging from nephritis to chronic pneumonia (whatever that is) and from poison ivy to sterility.

Petitioners' advertising consisted in the main of a pamphlet or should we say brochure, which contained first, a touching account of the lowly redskins' interest in their cacapaon (healing) waters;[1] second, a suggestion that they are responsible for **[519]** the vigor which enabled the Father of his country to assume that role; and third, both a summary of and quotations from the opinions of a series

[1] "Lo, the poor Indian! whose untutor'd mind Sees God in clouds, or hears him in the wind; His soul proud Science never taught to stray Far as the solar walk or milky way." Pope, Essay on Man, Epistle 1, Line 99.

of physicians anent the therapeutic properties of the Capon (Anglicized) Springs. These last begin in 1870 and extend to the present. They vary in intensity of praise from the mild "applicable" of Dr. William P. McGuire, former President of the Medical Society of Virginia, to the violent "cures almost everything" of Dr. R. A. F. Penrose, former Professor at the University of Pennsylvania.[2]

The present order of the Commission seems to us both inconsistent with what we know of their previous practice and open to the criticism we expressed in our recently filed opinion, *Belmont Laboratories* v. *Federal Trade Commission*, 103 F. (2d) 538. That comment referred to the fallacy of attempting to draw a "fine line" between remedy and cure. The present order seems to us to attempt an even more attenuated distinction. Under it, a bed manufacturer might advertise his products for the "cure" of pneumonia as long as he did not exclude the use of sulfapyridine. As the error is on the side of leniency petitioners should be pleased, not piqued.

Although this may be our feeling about the order we are affirming, there does not seem to be anything we can do about it. Our function is, of course, not nisi prius, and although not strictly appellate is confined by the statute to the enforcement of or refusal to enforce the Federal Trade Commission's orders. In the latter aspect, as the greater includes the lesser, we may modify. We cannot, however, sponte sua do what we have not been asked to do.

Even had this not been so, we should have preferred a different record. The Commission's experts seemed rather inexperienced in the particular branch and talked a good deal about Potomac River water. Petitioner's physicans, on the other hand, appeared to gather some of their clinical experience of Capon Springs Water from trying it on their dogs, record p. 561, and wives, record p. 546. For the future, if there is to be a future, we might call attention to one fact and one point of law. The chemical analysis of the water offered, and although criticized not rebutted, is substantially that of the Encyclopaedia Britannica's typical analysis of Mineral Waters, volume 15, 14th edition, p. 530.[3] We do not believe that the money back guarantee has any bearing on the legal philosophy of the statute. Our bodies and not our pocketbooks are being protected. To restore the cash is not to restore the health.

The order of the Federal Trade Commission is affirmed.

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[2] We have counted these appreciative appellations and find that they appear as follows:

Cure (Curative), 14; beneficial, 8; valuable, 6; remedy, 4; relieved, 3; therapeutic, 3; virtues, 2; applicable, 2; good effects, 2; radio-activity, 1; corrective, 1; indicated, 1; notable success, 1; chronic, 1; advantage, 1; restored, 1; influence, 1; improvement, 1; disappear, 1; recommends, 1; decided merit, 1; potent, 1; no equal, 1; relief, 1; wonderful, 1; solvent, 1; excelled, 1; efficacious, 1; diuretic, 1; reliable, 1.

[3] See also, Bell, Climatology and Mineral Waters of the United States, p. 145: The Propaganda for Reform in Proprietary Medicines, Vol. 2, p. 160; Blumgarten, Textbook of Materia Medica and Therapeutics, sub nomine, Saline Purgatives, p. 218.

EL MORO CIGAR COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 4479

(Circuit Court of Appeals, Fourth Circuit. November 6, 1939)

TRADE ACTS AND PRACTICES—NAMES AND DESIGNATIONS—GEOGRAPHIC NAMES—WHERE SECONDARY MEANING—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO—WHERE SMALLER TYPE, CONTRADICTORY QUALIFICATION.

Where the word "Havana" had acquired a special significance in the cigar trade and had come to mean that cigar labeled with a phrase in which the word was used was made at least in part from tobacco grown in Cuba, the use of the word to describe a cigar made entirely of domestic tobacco was an "unfair trade practice" and improperiety of use could not be cured by statement in smaller type on cigar boxes that cigars were made only of domestic tobacco. Federal Trade Commission Act, 15 U. S. A. sec. 41 et seq.

"Havana" is an adjective meaning of tobacco, grown in Cuba, of a cigar made in Cuba, or from Cuban tobacco.

NAMES AND BRANDS—LONG USE—WHERE MISLEADING—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO—WHETHER RIGHT TO VESTED IN USER AND COMMISSION PRECLUDED.

Long use of a misleading brand can vest no right in the user, and long continued use of the word "Havana" to describe cigars made from domestic tobacco would not preclude the Federal Trade Commission from questioning the propriety of such use.

CEASE AND DESIST ORDERS—PUBLIC INTEREST—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO.

An order of the Federal Trade Commission requiring cigar manufacturer to desist from using the word "Havana" in describing cigars made from domestic tobacco was not subject to attack on ground that interest of public was not involved.

FINDINGS OF COMMISSION—WHERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The findings of fact of the Federal Trade Commission, on which a cease and desist order is based, if supported by substantial evidence, are conclusive.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS OR PROCEDURE—ENFORCEMENT OF ORDER—COMPOSITION OF PRODUCT—NAMES AND BRANDS—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO—LABEL AND ADVERTISING CHANGES—COMPLIANCE PERIOD—COURT STAY POWER.

The fixing of the time which should be allowed cigar manufacturer, to change labels and advertising matter, before enforcement of order requiring it to desist from using the word "Havana" to describe cigars made from domestic tobacco, was within province of the Federal Trade Commission rather than the courts, and court could not delay enforcement of Commission's order, if lawful.

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[1] Reported in 107 F. (2d) 429. Case before Commission reported in 28 F. T. C. 639.

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE—"HAVANA" FOR CIGARS OF NON-CUBAN TOBACCO.

The findings of fact made by the Federal Trade Commission, in support of order requiring cigar manufacturer to desist from using the word "Havana" to describe cigars made from domestic tobacco, were supported by the great weight of the evidence.

(Syllabus, with substituted captions, is taken from 107 F. (2d) 429)

[430] On petition to review and set aside or modify portion of order by Commission, order affirmed.

Mr. Philip S. May, of Jacksonville, Fla. (*Mr. J. T. G. Crawford*, of Jacksonville, Fla., on the brief), for petitioner.

Mr. M. Marshall Morgan, special attorney, and *Mr. Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, both of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, and *Mr. James W. Nichol*, attorney, Federal Trade Commission, both of Washington, D. C., on the brief), for respondent.

Before PARKER and NORTHCOTT, Circuit Judges, and DOBIE, District Judge.

NORTHCOTT, *Circuit Judge:*

Petitioner seeks to review and to set aside or modify that portion of an order entered against it by the Federal Trade Commission on February 21, 1939, relating to the use of the word "Havana" in describing, designating, or referring to cigars not made from tobacco grown on the Island of Cuba and reading in its pertinent part as follows:

"It is ordered that the respondent, El Moro Cigar Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Using the word "Havana," or any other words, terms, or picturizations indicative of Cuba, alone or in conjunction with any other word or words to describe, designate, or in any way refer to cigars which are not made from tobacco grown on the Island of Cuba.

* * * * * * *

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."

Petitioner is a North Carolina corporation, engaged in manufacturing, selling, and distributing various brands of cigars, with its

place of business in the city of Greensboro, and is in competition with others engaged in the same business in various States.

In the year 1931 the petitioner acquired from a Pennsylvania concern the trade name "Havana Counts" that had been used since the year 1906, and began the manufacture and sale of a cigar under that label. On the boxes containing the cigars the words "Havana Counts" appeared in large letters and, until the year 1935, the words "Guaranteed Hand Made Imported and Domestic Stock." In the year 1935, the use of these latter words was discontinued and words "Domestic Filler Domestic Wrapper" substituted. The cigars, which retailed at 2 for 5 cents, were in a wrapper with the words "Havana Counts" printed on it and were packed in boxes containing 50 or 100. They were made in the United States entirely of domestic tobacco.

The Commission found that a very fine quality of tobacco used in the manufacture of cigars is grown on the Island of Cuba, near Havana, that the word "Havana" has acquired a special meaning and significance with manufacturers and users of cigars, and is understood to mean that the cigar to which the name is applied is made of tobacco that is grown on the Island of Cuba.

The Commission further found that words "Notice: These cigars are made in the United States entirely and only of domestic tobacco," placed in much smaller type than that used in the words "Havana Counts," did not qualify or explain the use of the word "Havana" so as to put a prospective purchaser upon notice, but that the two phrases were contradictory.

The Commission also held that the use of the word "Havana" in regard to a cigar that contained no Cuban tobacco was false and misleading and an unfair trade practice with respect to petitioner's competitors engaged in the cigar business in interstate commerce, within the meaning of the Federal Trade Commission Act passed September 26, 1914 (15 U. S. C. A. Sec. 41).

In asking that the order of the Commission directing it to cease using the word "Havana" in connection with a cigar made in the United States from domestic tobac[431]co only be set aside, the petitioner contends that it is a fact well known to both the trade and consumer that a cigar with any appreciable amount of Cuban tobacco in it could not be sold at retail for two for 5 cents and that therefore the use of the word could not deceive or mislead anybody and was not unfair; that having purchased the brand "Havana Counts," and having used it for a number of years, the petitioner had acquired a property interest by the use of the name that the Commission had no authority to take from it; and that the brand in question had been used for more than 33 years and was acquired by the petitioner more than 17 years after the establishment of the Commission, which had

not, in that time questioned the propriety of its use, and that therefore the use of the brand should not be interfered with.

Hearings were held at which numerous witnesses were examined.

A study of the voluminous testimony taken shows conclusively that the word "Havana" has acquired a special meaning or significance in the cigar trade when applied to a cigar. It has come to mean that the cigar labeled with a phrase in which the word is used, is made, at least in part, from tobacco grown in Cuba. This being true, it necessarily follows that the word cannot properly be used in describing a cigar made entirely of domestic tobacco. In the case of *Heusner & Son* v. *Federal Trade Commission*, decided August 10, 1939, 106 F. (2d) 596, the Circuit Court of Appeals for the Third Circuit said in considering a similar question (597):

"The difficulty of petitioner's position lies in the fact that the implication of the word 'Havana' is totally false. The purchaser can be guided by either label or legend, but not by both. * * *"

The Third Circuit has also held to the same effect with regard to the word "Havana," in the second decision in the Bayuk case handed down June 26, 1939,[1] and a similar holding was approved in the Second Circuit. (*F. T. C.* v. *Edwin Cigar Co.*, 67 F. (2d) 993.)

Webster's New International Dictionary, Edition 1934, defines "Havana" as an adjective meaning "of tobacco, grown in Cuba, of a cigar made in Cuba or from Cuban tobacco."

Having acquired this meaning the use of the word to describe something different constitutes an unfair trade practice. *F. T. C.* v. *Walkers New River Mining Co.*, 79 F. (2d) 457; *Lighthouse Rug Co.* v. *F. T. C.*, 35 F. (2d) 163; *F. T. C.* v. *Maisel Trading Post, Inc.*, 77 F. (2d) 163.

Nor can the impropriety of the use of the word "Havana" be cured by the sentence, "These cigars are made in the United States entirely and only of domestic tobacco," in smaller type than is used in the words "Havana Counts." *F. T. C.* v. *Army and Navy Trading Co.*, 88 F. (2d) 776.

Long use of a misleading brand can vest no right in the user. As was said by Mr. Justice Cardozo, in *F. T. C.* v. *Algoma Lumber Co.*, 291 U. S. 67:

"* * * The Federal Trade Commission was not organized till 1914, its jurisdiction then as now confined to interstate and foreign commerce. Silence up to that time is not even a faint token that the misapplied name had the approval of the industry. It may well have meant no more than this, that the evil was not great, or that there was no champion at hand to put an end to the abuse. Even silence thereafter will not operate as an estoppel against the community at large, whatever its effect upon individuals asserting

[1] No opinion filed. See ante, p. 1574.

the infringement of proprietary interests. *French Republic* v. *Saratoga Vichy Co.*, 191 U. S. 427. There is no bar through lapse of time to a proceeding in the public interest to set an industry in order by removing the occasion for deception or mistake * * *."

It cannot be successfully contended that the interest of the public is not involved. As we said in the *Walkers New River Mining case, supra:*

"That the public interest is involved cannot be doubted. It is manifestly in the interest of the public to prevent the continuance of an unfair practice which tends to deceive the public and divert trade from competitors."

The findings of the Commission, if supported by substantial evidence, [432] are conclusive. *F. T. C.* v. *Walkers New River Mining Co., supra; F. T. C.* v. *Algoma Lumber Co., et al., supra.*

It has been urged on behalf of the petitioner that, should the Commission's order be enforced, a reasonable time should be allowed before it becomes effective, so that petitioner's labels and advertising matter could be changed. This matter is more properly within the province of the Commission rather than the courts. We are of the opinion that we have no power to order any delay in the putting into effect of a lawful order of the Commission.

The findings of fact made by the Commission are supported by the great weight of the evidence. The order made was a proper one and an order will be entered enforcing it.

RESTRAINING AND INJUNCTIVE ORDERS OF THE COURTS UNDER THE PROVISIONS OF SECTION 13 OF THE FEDERAL TRADE COMMISSION ACT[1]

FEDERAL TRADE COMMISSION v. J. V. CORDES AND MRS. J. H. CORDES, DOING BUSINESS AS MARTHA BEASLEY ASSOCIATES.[2]

File No. 1264

(District Court, Eastern District of Michigan, Southern Division, June 29, 1939)

Decree of preliminary injunction by District Judge Edward J. Moinet, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendants' drug-containing preparations for women, under designations "Martha Beasley Compound Formula No. 2" and "Martha Beasley Compound Formula No. 3"; pending issuance of complaint by Commission against defendants under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[3]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Gerard A. Rault*, special attorney, both of Washington, D. C., for the Commission.

Mr. Horace J. Donnelly, Jr., of Washington, D. C., *Mr. John A. Nash*, of Chicago, Ill., and *Palmer, Aldrich & McMath*, of Detroit, Mich., for defendants.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction

[1] Three of such injunctive orders or decrees under said section, which was among those added to the original Federal Trade Commission Act by the Wheeler-Lea Act, approved March 21, 1938, have been entered prior to the period covered by this volume, i. e., June 1 to November 30, 1939, as follows:

F. T. C. v. *Hartman Wholesale Drug Co., Inc., et al.*, D. C. for N. D. of Ill., September 16, 1938, 27 F. T. C. 1693; *F. T. C.* v. *Western Chemicals, Inc., et al.*, D. C. for W. D. of Wash., March 27, 1939, 28 F. T. C. 1939; and *F. T. C.* v. *Lewyn Drug, Inc.*, D. C. for S. D. of Cal., Central Division, April 7, 1939, 28 F. T. C. 1951.

[2] Not reported in Federal Reporter.

[3] Such complaint duly issued in the matter of J. V. Cordes and Mrs. J. H. Cordes, doing business as Martha Beasley Associates, Docket 3841, on June 30, 1939, and is now pending.

against the defendants J. V. Cordes and Mrs. J. H. Cordes, trading as Martha Beasley Associates, and the court having read the pleadings and affidavits filed in connection therewith and having heard and considered the arguments of counsel, and

It appearing to the court, That the defendants are domiciled in and transact business in the Eastern District of Michigan, and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendants, and

It appearing to the court, That said defendants are engaged in the sale and distribution of two medicinal preparations for the relief of delayed menstruation designated as Martha Beasley Compound Formula No. 2 and Martha Beasley Compound Formula No. 3, in commerce between and among the various states of the United States and in the District of Columbia, and

It appearing to the court, That said defendants have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements by the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce directly or indirectly the purchase of said medicinal preparation, and that said defendants are disseminating, have now disseminated and have caused and are now causing the dissemination of false advertisements by various means for the purpose of inducing or which are likely to induce directly or indirectly the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act by means of which advertising the defendants have falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and

It appearing to the court, That the following drugs constitute the chief ingredients of each of these preparations: Apiol, Savin, Ergotin, Water, Pepper, Aloin, and

It appearing to the court, That the use of either of these preparations may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation, and congestion of the uterus leading to excessive uterine hemorrhage and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with injury to the pelvic and abdominal structures, causing septicemia or blood poisoning, and

It appearing to the court, That the further dissemination of such false advertisements would cause immediate and irreparable injury

to the public, and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a court on review or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act,

It is hereby ordered, adjudged, and decreed, That the defendants J. V. Cordes and Mrs. J. H. Cordes, trading as Martha Beasley Associates, their agents, servants, representatives, employees, and assigns and all other persons participating with them and having notice of this order, be and they hereby are, and each of them is hereby strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase of said preparations known as Martha Beasley Compound Formula No. 2 and Martha Beasley Compound Formula No. 3, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, and which advertisements represent that either or both of said preparations constitute a safe, competent and scientific treatment for delayed menstruation or that their use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary and usual may result in the serious illness and in some cases the death of the user;

Pending the issuance of a complaint by the Federal Trade Commission against said defendants under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act,

It is further ordered, That this decree of injunction issue without bond.

FEDERAL TRADE COMMISSION v. IRVING SOFRONSKI, TRADING AS DR. RON-AL MEDICINE COMPANY, DR. PENN'S PRODUCTS COMPANY, PENN PRODUCTS, AND DR. ALBAR'S MEDICINE COMPANY[1]

File No. 386

(District Court, Eastern District of Pennsylvania. June 30, 1939)

Decree of preliminary injunction by District Judge Kalodner, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparations for women, under designations "Dr. Ron-Al's Relief Compound," "Relief Compound," and "Regulator"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. J. L. Baker*, special attorney, both of Washington, D. C., for the Commission.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Irving Sofronski, an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., Penn Products, and Dr. Albar's Medicine Co., and the court having read the pleadings and the affidavits filed in connection therewith, and having heard and considered the arguments of counsel, and

It appearing to the court, That the defendant is domiciled and transacts business in the Eastern District of Pennsylvania, and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendant, and

It appearing to the court, That said defendant is engaged in the sale and distribution of medicinal preparations containing drugs for the relief of delayed menstruation, designated as Dr. Ron-Al's Relief Compound, Relief Compound, and Regulator, in commerce between and among the various States of the United States and in the District of Columbia, and

It appearing to the court, That said defendant has disseminated and is now disseminating, and has caused and now causes the dissemination of, false advertisements by United States mails and by other

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Irving Sofronski, trading as Dr. Ron-Al Medicine Co., etc., Docket 3848, and was followed by order to cease and desist issued as of October 3, 1939. See *ante*, p. 1062.

means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and

It appearing to the court, That the use of these preparations under the conditions prescribed in said advertisements, or under conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where these preparations are used to interfere with the normal course of pregnancy, may also result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning and that the use of said preparations is a menace to the health and life of pregnant women, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act:

It is hereby ordered, adjudged, and decreed, That the defendant, Irving Sofronski, an individual trading as Dr. Ron-Al Medicine Co., Dr. Penn's Products Co., Penn Products and Dr. Albar's Medicine Company, his agents, servants, representatives, employees, and assigns, and all other persons participating with him and having notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations known as Dr. Ron-Al's Relief Compound, Relief Compound, and Regulator,

whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute a safe, competent and scientific treatment for delayed menstruation or that their use will have no ill effect upon the human body, or which advertisements fail to reveal that when said preparations are taken under the conditions prescribed in said advertisements or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction be issued without bond.

FEDERAL TRADE COMMISSION v. ROBERT C. OBERLIN, TRADING AS RESEARCH PRODUCTS COMPANY.[1]

File No. 19901

(District Court, Northern District of Ohio. June 30, 1939)

Decree of preliminary injunction by District Judge Robert N. Wilkin, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparations for women, under designations "Dupree Pills" and "Dupree Double Strength Pills," or "Doctor Gordon's Special Formula Double Strength Pills"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. William L. Pack*, special attorney, both of Washington, D. C., for the Commission.

Mr. Henry B. Johnson, of Cleveland, Ohio, for defendant.

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Robert C. Oberlin, trading as Research Products Co., Docket 3863, and was followed by order to cease and desist issued as of September 18, 1939. See *ante*, p. 970.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Robert C. Oberlin, an individual trading as Research Products Co., and

It appearing to the court, That the defendant is domiciled and transacts business in the Northern District of Ohio, and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and

It appearing to the court, That the defendant has waived any hearing herein and has consented that this decree might be entered forthwith, and

It appearing to the court, That said defendant is engaged in the sale and distribution of medicinal preparations containing drugs for the relief of delayed menstruation, designated as Dupree Pills and Dupree Double Strength Pills, or Doctor Gordon's Special Formula Double Strength Pills, in commerce between and among the various states of the United States and in the District of Columbia, and

It appearing to the court, That said defendant has disseminated and is now disseminating, and has caused and now causes the dissemination of, false advertisements by United States mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and

It appearing to the court, That the use of these preparations under the conditions prescribed in said advertisements, or under conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even the blood stream causing the condition known as septicemia or blood poisoning, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act:

It is hereby ordered, adjudged, and decreed, That the defendant, Robert C. Oberlin, an individual trading as Research Products Co., his agents, servants, representatives, employees, and assigns, and all other persons participating with him and having notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations known as Dupree Pills and Dupree Double Strength Pills, or Doctor Gordon's Special Formula Double Strength Pills, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute a safe, competent and scientific treatment for delayed menstruation or that their use will have no ill effect upon the human body, or which advertisements fail to reveal that when said preparations are taken under the conditions prescribed in said advertisements or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendant under Section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction be issued without bond.

FEDERAL TRADE COMMISSION v. HARRY S. BENHAM, TRADING AS AMERICA'S MEDICINE AND NU-MODE COMPANY.[1]

File No. 717

(District Court, Northern District of Illinois. July 5, 1939)

Decree of preliminary injunction by District Judge Holly, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparations for women, under designations "America's Medicine XX Compound," "Nu-Mode XX Compound" and "Kotess Periodic Relief Compound," and "America's Medicine XXX Compound," "Nu-Mode XXX Compound," and "Kotess Periodic Relief Compound"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for defendant.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Harry S. Benham, an individual trading as America's Medicine, and Nu-Mode Co., and the court having read the pleadings and the affidavits filed in connection therewith, and having heard and considered the arguments of counsel, and

It appearing to the court, That the defendant is domiciled and transacts business in the Northern District of Illinois, and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendant, and

It appearing to the court, That said defendant is engaged in the sale and distribution of medicinal preparations containing drugs for the relief of delayed menstruation, designated as America's Medicine XX Compound, Nu-Mode XX Compound, and Kotess Periodic Relief Compound, and America's Medicine XXX Compound, Nu-Mode XXX Compound, and Kotess Periodic Relief Compound, in commerce between and among the various States of the United States and in the District of Columbia, and

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Harry S. Benham, trading as America's Medicine and Nu-Mode Company, Docket 3851, and was followed by order to cease and desist issued as of September 9, 1939. See *ante*, p. 871.

It appearing to the court, That said defendant has disseminated and is now disseminating, and has caused and now causes the dissemination of, false advertisements by United States mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce, directly, or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body and

It appearing to the court, That the use of these preparations under the conditions prescribed in said advertisements or under conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in the loss of the limbs or in other serious or irreparable injury to health, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of Section 5 of said Act;

It is hereby ordered, adjudged, and decreed, That the defendant, Harry S. Benham, an individual trading as America's Medicine and Nu-Mode Co., his agents, servants, representatives, employees, and assigns, and all other persons participating with him and having

notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminted any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations known as America's Medicine XX Compound, Nu-Mode XX Compound, and Kotess Periodic Relief Compound, and America's Medicine XXX Compound, Nu-Mode XXX Compound, and Kotess Periodic Relief Compound, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute a safe, competent and scientific treatment for delayed menstruation or that their use will have no ill effect upon the human body, or which advertisements fail to reveal that when said preparations are taken under the conditions prescribed in said advertisements or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereupon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction be issued without bond.

FEDERAL TRADE COMMISSION v. LELAND F. BENHAM, TRADING AS THE ZELLE COMPANY[1]

File No. 691

(District Court, Northern District of Illinois, Eastern Division. July 5, 1939)

Decree of preliminary injunction by District Judge Holly, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparations for women, under desig-

[1] Not reported in Federal Reporter.

nations "Zellets No. 1" and "Zellets No. 2"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for defendant.

Decree

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Leland F. Benham, trading as The Zelle Co., and the court having read the pleadings and affidavits filed in connection therewith, and having heard and considered the arguments of counsel, and

It appearing to the court, That the defendant is domiciled and transacts business in the Northern District of Illinois, Eastern Division, and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendant, and

It appearing to the court, That said defendant is engaged in the sale and distribution of two medicinal preparations containing drugs for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2" in commerce between and among the various states of the United States and in the District of Columbia, and

It appearing to the court, That said defendant has disseminated and is now disseminating and has caused and now causes the dissemination of false advertisements by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce directly or indirectly the purchase of said medicinal preparations and by various means for the purpose of inducing or which are likely to induce directly or indirectly the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and

[2] Such complaint duly issued in the matter of Leland F. Benham, trading as The Zelle Co., Docket 3854, and was followed by order to cease and desist issued as of September 11, 1939. See *ante*, p. 905.

It appearing to the court, That the use of either of these preparations under the conditions prescribed in said advertisements or under conditions as are customary and usual, may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition shown as septicemia or bloodpoisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in the loss of limbs or in other serious or irreparable injury to health, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commisison or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of Section 5 of said Act.

It is hereby ordered, adjudged, and decreed, That the defendant, Leland F. Benham, trading as The Zelle Co., his agents, servants, representatives, employees, and assigns, and all other persons participating with him and having notice of this order, be, and they hereby are, and each of them is hereby strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations known as "Zellets No. 1" and "Zellets No. 2" whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce as "commerce"

is defined in the Federal Trade Commission Act, and which advertisements represent that either or both of said preparations constitute a safe, competent and scientific treatment for delayed menstruation and that their use will have no ill effect upon the human body, or which advertisements fail to state that said preparations, if used as directed or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction issue without bond.

FEDERAL TRADE COMMISSION v. EARL ARONBERG, TRADING AS POSITIVE PRODUCTS COMPANY AND REX PRODUCTS COMPANY[1]

File No. 712

(District Court, Northern District of Illinois. July 6, 1939)

Order for preliminary injunction by District Judge Charles E. Woodward, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparations, for women, under designations "Triple-X Relief Compound" and "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound"; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., for defendant.

Order for Preliminary Injunction

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Earl Aronberg, trading as Positive Products Co. and Rex Products Co., Docket 3856, on July 20, 1939, and is now pending.

against the defendant, Earl Aronberg, an individual trading as Positive Products Co. and Rex Products Co., and the court having read the pleadings and the affidavits filed in connection therewith, and having heard and considered the arguments of counsel, and from the sworn bill of complaint and the affidavits filed in connection therewith, the Court finds:

1. That the defendant is domiciled and transacts business in the Northern District of Illinois.

2. That it has jurisdiction over the parties and the subject matter hereof.

3. That said defendant is engaged in the sale and distribution of medicinal preparations containing drugs for the relief of delayed menstruation, designated as Triple-X Relief Compound and Reliable Perio Compound, also known as Perio Pills and Perio Relief Compound, in commerce between and among the various States of the United States and in the District of Columbia.

4. That said defendant has disseminated and is now disseminating, and has caused and now causes the dissemination of, false advertisements by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body.

5. That the use of these preparations under the conditions prescribed in said advertisements or under conditions as are customary and usual, may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood-poisoning. The use of said preparations might also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower

limbs, resulting possibly either in the loss of limbs or in other serious or irreparable injury to health.

6. That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

7. That the plaintiff is entitled to the issuance of a preliminary injunction as prayed for in said complaint.

It is hereby ordered, adjudged and decreed, That the defendant, Earl Aronberg, an individual, trading as Positive Products Co., and Rex Products Co., his agents, servants, representatives, employees, and assigns, and all other persons participating with him and having notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing the purchase of said medicinal preparations known as Triple-X Relief Compound and Reliable Perio Compound, also known as Perio Pills and Perio Relief Compound, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute a safe, competent and scientific treatment for delayed menstruation or that their use will have no ill effect upon the human body, or which advertisements fail to reveal that said preparations when taken under the conditions prescribed in said advertisements or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this order of injunction be issued without bond.

FEDERAL TRADE COMMISSION v. EDWARD L. JENKINS AND MILDRED JENKINS, TRADING AS ANTISEPTO PRODUCTS COMPANY, ANTISEPTO PRODUCTS, EDUCATIONAL PRODUCTS COMPANY, AND SANITOL PRODUCTS COMPANY[1]

File No. 727

(District Court, Northern District of Illinois, Eastern Division. July 11, 1939)

Decree of preliminary injunction by District Judge James H. Wilkerson, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of defendants' drug-containing preparations for women, under designations "Guaranteed Antisepto Anti-Delay Compound Regular Strength Tablets" and "Guaranteed Antisepto Anti-Delay Compound Super Strength Tablets"; pending issuance of complaint by Commission against defendants under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Decree

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendants, Edward L. Jenkins and Mildred Jenkins, individuals trading as Antisepto Products Co., Antisepto Products, Educational Products Co., and Sanitol Products Co., and the Court having read the pleadings and the affidavits filed in connection therewith, and having heard and considered the arguments of counsel, and

It appearing to the court, That the defendants are domiciled and transact business in the Northern District of Illinois, Eastern Division and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendants, and

It appearing to the court, That said defendants are engaged in the sale and distribution of medicinal preparations containing drugs for the relief of delayed menstruation, designated as Guaranteed Anti-

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Edward L. Jenkins and Mildred Jenkins, trading as Antisepto Products Co., etc., Docket 3867, and was followed by order to cease and desist issued as of November 7, 1939. See *ante*, p. 1288.

septo Anti-Delay Compound Regular Strength Tablets and Guaranteed Antisepto Anti-Delay Compound Super Strength Tablets, in commerce between and among the various States of the United States and in the District of Columbia, and

It appearing to the court, That said defendants have disseminated and are now disseminating, and have caused and now cause the dissemination of, false advertisements by United States mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that the use of said preparations known as Guaranteed Antisepto Anti-Delay Compound Regular Strength Tablets and Guaranteed Antisepto Anti-Delay Compound Super Strength Tablets is a competent, safe and scientific treatment for delayed menstruation, and that their use will have no ill effects upon the human body, and

It appearing to the court, That the use of either of these preparations, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual, may result in a very severe circulatory condition by the constriction of blood vessels and contraction of involuntary muscles tending to produce abortion, and is a menace to the health and life of pregnant women, and that such use may also produce violent poisonous effects upon the human system and is liable to produce severe toxic conditions such as hemorrhagic diarrhea and, in some instances, producing a gangrenous condition in the lower limbs resulting in either the loss of limbs or in the death of the individual, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Tade Commission under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act;

It is hereby ordered, adjudged, and decreed, That the defendants, Edward L. Jenkins and Mildred Jenkins, individuals trading as Antisepto Products Co., Antisepto Products, Educational Products

Co. and Sanitol Products Co., their agents, servants, representatives, employees and assigns, and all other persons participating with them and having notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations known as Guaranteed Antisepto Anti-Delay Compound Regular Strength and Guaranteed Antisepto Anti-Delay Compound Super Strength, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute a safe, competent and scientific treatment for delayed menstruation, or that their use will have no ill effect upon the human body, or which advertisements fail to reveal that when said preparations are taken under the conditions prescribed in said advertisements or under such conditions as are customary and usual, may result in serious or irreparable injury to health; pending the issuance of a complaint by the Federal Trade Commission against said defendants under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction be issued without bond.

FEDERAL TRADE COMMISSION v. CHARLES L. KLAPP, TRADING AS THE CARDINAL CO. AND THE CARDINAL COMPANY OF ST. LOUIS.[1]

File No. 290

(District Court, Eastern District of Missouri, Eastern Division. August 14, 1939)

Decree of preliminary injunction by District Judge J. C. Collet, restraining, for the reasons and as below set forth, including immediate and irreparable

[1] Not reported in Federal Reporter.

injury to public in further dissemination of such false advertisements, advertisement of defendant's drug-containing preparation for women, under designation "Fema-Lade"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. William L. Pack*, special attorney, both of Washington, D. C., for the Commission.

Mr. H. W. Trippett, of St. Louis, Mo., for defendant.

Decree

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Charles L. Klapp, an individual trading as the Cardinal Co., and as the Cardinal Co. of St. Louis, and

It appearing to the court, That the defendant has waived any hearing herein, and has consented that this decree might be entered forthwith, and

It appearing to the court, That the defendant is domiciled and transacts business in the Eastern District of Missouri, Eastern Division, and that the court has jurisdiction over the parties and subject matter hereof, and

It appearing to the court, That said defendant is engaged in the sale and distribution of a medicinal preparation containing drugs for the relief of delayed menstruation, designated as Fema-Lade, in commerce, between and among the various States of the United States and in the District of Columbia, and

It appearing to the court, That said defendant has disseminated and is now disseminating, and has caused and now causes the dissemination of false advertisements by United States mails and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparation, and by various means for the purpose of inducing or which are likely to induce directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said preparation is a competent, safe, and scientific treatment for delayed menstruation and that its use will have no ill effects upon the human body, and

[2] Such complaint duly issued in the matter of Charles L. Klapp, trading as The Cardinal Co. etc., Docket 3879, on August 26, 1939, and is now pending.

It appearing to the court, That the use of this preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in gastrointestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage in nonpregnant women; that in those cases where Fema-Lade is used to interfere with the normal course of pregnancy its use may result in uterine infection with extension to other pelvic and abdominal structures and to the blood stream, causing the condition known as septicemia or blood poisoning, and that the use of said preparation is a menace to the health and life of pregnant women, and

It appearing to the court, That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission, or set aside by a court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act;

It is hereby ordered, adjudged, and decreed, That the defendant, Charles L. Klapp, an individual trading as the Cardinal Co., and as the Cardinal Co., of St. Louis, his agents, servants, representatives, employees, and assigns and all other persons participating with him and having notice of this order, be, and they hereby are, and each of them hereby is, strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails, or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparation known as Fema-Lade, whether sold under the same name or under any other names, or disseminating or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent that said preparation constitutes a safe, competent, and scientific treatment for delayed menstruation or that its use will have no ill effect upon the human body, or which advertisements fail to reveal that said preparation when taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to health; pending

the issuance of a complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction be issued without bond.

PENALTY PROCEEDINGS

During the period covered by this volume, i. e., June 1, 1939, to November 30, 1939, in a criminal information suit in the United States District Court for the Northern District of Illinois, in *U. S.* v. *John Petrie, trading as B–X Laboratories and Purity Products Co.*, brought under the provisions of section 14 of the Federal Trade Commission Act, penalty was entered in the sum of $1,000 on November 14, 1939, and judgment satisfied.

Such suit was founded on said Petrie's dissemination of false advertisements with respect to products alleged to be injurious to health because of results from use thereof under the conditions prescribed in their advertisement, or under such conditions as are customary and usual. Products in question were offered and sold by said Petrie for use by women, under designations "Menstrua," "Minex," "B–X Monthly Relief Compound," "B–X Monthly Tablets" and "Hygeen."

During the period referred to there was also pending a civil penalty suit, brought under the provisions of paragraph (1) of section 5 of the Federal Trade Commission Act, in the same court and against the same defendant, growing out of false advertisements disseminated by said defendant in violation of a cease and desist order entered against him in the matter of *John Petrie, trading as B–X Laboratories, etc.*, docket 2123, July 25, 1938, 27 F. T. C. 541.

Such proceeding was terminated by an agreed judgment in the sum of $2,500, which was entered on December 6, 1939.

In the Commission order in question, said Petrie, trading as Purity Products Co., and otherwise, his representatives, etc., in connection with the offer, etc., in interstate commerce or in the District of Columbia, of the products therein set forth and named, or others composed of substantially the same ingredients or possessing similar properties, were required to cease and desist from representing, directly or by implication—

(1) That said products "Menstrua," or "Minex," "B–X Monthly Relief Compound," or "B–X Monthly Tablets," form safe, competent, or reliable remedies or treatments for delayed, painful, or suppressed menstruation, or for menstrual disorders generally; or that said products form a general preventive for ill health; or that said products are effective to tone up the generative organs, or the whole system; or that said products are abortifacients; or that said products are harmless or produce no bad after effects.

(2) That said product "Hygeen" is an effective, potent, or powerful germicide under the conditions of use for feminine hygiene; or that it is effective in the

prevention of venereal diseases; or that it can be used safely or without fear of harmful results so far as the prevention of infection is concerned; or that it is a positive or dependable contraceptive under all conditions or in all cases; or that it is effective as a deodorant for use after menstruation; or that it is harmless.

Said order further required—

That the respondent, John Petrie, an individual, trading under the trade names Purity Products Co., B-X Laboratories, and under other names, shall, within ten (10) days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, setting forth in detail the manner and form in which he intends to comply; and that, within sixty (60) days after service upon him of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

During this period another civil penalty suit in another cause, namely, *U. S.* v. *K. & S. Sales Co.*, brought under the provisions of paragraph (1) of Section 5 of the Federal Trade Commission Act, in the above court, was terminated by the entry, on November 27, 1939, of judgment against said defendant in the sum of $4,500, and satisfaction of such judgment at time of entry.

Said suit, in which complaint was filed by the Department of Justice on April 20, 1939, grew out of defendant's violation of a Commission order entered against it in the matter of *K. & S. Sales Co., etc.*, Docket 1857, January 13, 1938, 26 F. T. C. 328.

Such order directed said defendant, respondent before the Commission, its officers, etc., in connection with offer, etc., in interstate commerce or in the District of Columbia, of various articles of merchandise, and which had included hosiery, clocks, cameras, etc., forthwith to cease and desist from, among other things—

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.

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